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The American Bar Association Journal

ISSUED QUARTERLY

BY THE AMERICAN BAR ASSOCIATION

CONTENTS

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Letters as to other business relating to the JOURNAL should be addressed to the office of publication; those as to the Bureau of Comparative Law to Robert P. Shick, Franklin Bank Building, Philadelphia, Pa.; and those as to the general plan and literary contents of the JOURNAL to the Chairman of the Committee on Publications, Simeon E. Baldwin, New Haven, Conn.

OFFICE OF PUBLICATION

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ORDER OF ARRANGEMENT OF REPORTS OF COMMITTEES

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The American Bar Association Journal

VOL. I JULY, 1915 No. 3

1915

American Bar Association

PROGRAM

OF

MEETING

AT

SALT LAKE CITY, UTAH

August 17, 18, 19

(TUESDAY, WEDNESDAY, THURSDAY)

HEADQUARTERS

The Headquarters of the Association will be at the Hotel Utah, corner of Main and S. Temple Streets.

The offices of the Secretary and Treasurer will be located in the Supper Room, Mezzanine Floor, Hotel Utah.

The business sessions of the Association will be held and the formal addresses before it (except the address on Tuesday evening) will be delivered in Assembly Hall, one-half block from Headquarters.

The Executive Committee of the Association will meet on Monday, August 16, 9 P. M., in the Music Room, Mezzanine Floor, Hotel Utah.

The General Council of the Association will meet in Barrett Hall, Main Street, one-half block north of Hotel Utah.

The first meeting of the Council will be held on Tuesday, August 17, 9 A. M.

REGISTRATION

The Secretary's office will continue the system of REGISTRATION CARDS in use last year. These cards may be obtained at Headquarters or at Assembly Hall.

Cards should be signed *plainly*. All blanks should be filled and cards returned *promptly* to Secretary's office, Hotel Utah.

A printed list of members in attendance at the meeting will be prepared from the registration cards. The names of those members only whose cards are received before 8 o'clock on Monday evening, August 16, will appear in the first edition.

The Secretary's office will open for registration on Monday morning, August 16, at 10 o'clock.

BUSINESS PROGRAM OF THE ASSOCIATION

TUESDAY MORNING, AUGUST 17, AT 10 O'CLOCK.

Address of Welcome: George Sutherland, United States Senator from Utah.

President's Address: "The Lawyer," Peter W. Meldrim, President of the Association.

Report of the Secretary.
Report of the Treasurer.
Report of the Executive Committee.
Nomination and Election of Members.

State delegations will meet in Assembly Hall at the CLOSE of this session to nominate members of the General Council, and also to select a Vice-President and Local Council for each state. (If a delegation desires to hold its meeting elsewhere, notice should be given to the Secretary PRIOR to this session in order that due announcement may be made.) *See page* 201.

TUESDAY EVENING, AUGUST 17, AT 8 O'CLOCK.
This session will be held in the Tabernacle.

Annual Address: "The American Judiciary," Joseph W. Bailey, former Senator from Texas.

The speaker will be introduced by Hon. William Howard Taft, former President of the Association.

Election of the General Council.

For the Concert in the Tabernacle at 9.00 P. M., see page 200.

Tickets of admission for this session and the Concert will be necessary, and may be obtained at the Secretary's office, Hotel Utah.

For the President's reception, Hotel Utah, at 10 P. M., see page 200.

WEDNESDAY MORNING, AUGUST 18, AT 10 O'CLOCK.

Reports of Standing Committees:

Jurisprudence and Law Reform.
Judicial Administration and Remedial Procedure.
Legal Education and Admissions to the Bar.
Commercial Law.
International Law.
Publications.
Grievances.
Law Reporting and Digesting.
Patent, Trade-Mark and Copyright Law.
Insurance Law.
Taxation.
Uniform State Laws.
Publicity.
Membership.
Professional Ethics.
Obituaries.

Reports of Special Committees:

Uniform Judicial Procedure.
To Suggest Remedies and Formulate Proposed Laws to Prevent Delay and Unnecessary Cost in Litigation.
To Oppose the Judicial Recall.
To Present to Congress Bills Relating to Courts of Admiralty.
Government Liens on Real Estate.
Compensation to Federal Judiciary.
Drafting of Legislation.
Comparative Law Bureau.
Reorganization.
Noteworthy Changes in Statute Law.
Reports and Digests.
Relief Fund for European Lawyers.

For the Excursion at 3 P. M., see page 200.

WEDNESDAY EVENING, AUGUST 18, AT 8 O'CLOCK.

Address: "Changes in International Law," Simeon E. Baldwin, former Chief Justice of the Supreme Court of Errors of Connecticut.

Unfinished Reports of Committees.

THURSDAY MORNING, AUGUST 19, AT 10 O'CLOCK.

Address: "The Present State of Law, and Necessary Functions of Law Schools," Felix Frankfurter, of the Faculty of Law, Harvard University.

Nomination of Officers.
Unfinished Reports of Committees and other unfinished business.
Miscellaneous Business.
Election of Officers.

An additional session may be held on Thursday afternoon, August 19, at 2 o'clock, if unfinished matters require.

For the Dinner at 7 P. M., see pages 200, 201.

PROGRAMS OF SUBSIDIARY AND ALLIED BODIES

Section of Legal Education

The sessions will be held in the Ball Room, Newhouse Hotel, Main and Fourth South Streets.

The session on Monday afternoon, August 16, will be for State Bar Examiners and Law School Teachers, under the auspices of the Section.

MONDAY, AUGUST 16, 2.30 P. M.

Opening remarks by the Chairman of the Section, Charles E. Shepard, of Washington.

A Symposium on Certain Problems in State Bar Examinations, and Admission to the Bar. (The topics and speakers will be announced later.)

Discussion of the papers and topics presented.
Resolutions by the Section.

TUESDAY, AUGUST 17, 3.30 P. M.

Annual address by the Chairman of the Section, Charles E. Shepard, of Washington.

Presentation of the final report of the Committee on Standard Rules for Admission to the Bar, by Lucien H. Alexander, of Pennsylvania.

Papers on topics to be announced.
Discussion of the papers presented.
Resolutions by the Section.

THURSDAY, AUGUST 19, 2.30 P. M.

Discussion of the propositions submitted in the report of the Committee on Standard Rules for Admission to the Bar.

Resolutions by the Section.

Comparative Law Bureau

The session will be held in Room C-38, Hotel Utah, on Tuesday afternoon, August 17, at 2 o'clock.

The order of business will be as follows:

Annual Address of the Director, Simeon E. Baldwin, of Connecticut.

Treasurer's Report.

Report to American Bar Association.

Discussion of submitted topics.

Election of Officers and Managers.

New Business.

Membership and participation at the meeting are classified as follows:

Class A. All Members of the American Bar Association.

Class B. State Bar Associations, by three delegates each.

Class C. Law Schools, Law Libraries, Institutions of Learning, City and County Bar Associations, by two delegates each.

Class D. Individual lawyers who are not members of the American Bar Association, by personal attendance.

Section of Patent, Trade-Mark and Copyright Law

The session will be held in the United States Circuit Court Room, Federal Building, Main Street, on Monday afternoon, August 16, at 3 o'clock.

Address, Robert H. Parkinson, of Illinois, Chairman.

Address, Charles E. Townsend, of California. "The Possibilities of the Right of Discovery in Patent Litigation; Some Recent Judicial Developments."

Miscellaneous discussion.

Judicial Section

Monday evening, August 16, 1915, at 7 o'clock, there will be an informal dinner at the Hotel Utah (Supper Room) for all members of the Section and officers and former presidents of the American Bar Association.

The business session will be held in the Ball Room, Mezzanine Floor, Hotel Utah, on Tuesday afternoon, August 17, at 2 o'clock.

Address by Chairman Orrin N. Carter, Judge of the Supreme Court of Illinois, Chairman of the Section.

Address by Mr. Justice Van Devanter, of Wyoming, Associate Justice of the Supreme Court of the United States, unless he finds his engagements such that he cannot attend, in which case some other prominent jurist will speak.

Appointment of certain committees and transaction of necessary business.

Discussion: "Uniformity in Practice and Procedure; is it desirable; if so how best secured; shall courts or legislatures frame the rules?" to be participated in by

Frank S. Dietrich, of Idaho, U. S. District Judge.

Ira E. Robinson, Presiding Judge, Supreme Court of Appeals of West Virginia.

Thomas C. McClellan, Judge Supreme Court of Alabama.

William H. Gabbert, Chief Justice, Supreme Court of Colorado.

General discussion by members of the Section, each limited to seven minutes.

New Business.

Election of Officers.

Conference of Commissioners on Uniform State Laws

The Twenty-fifth Annual Conference will be held in the United States District Court Room, Federal Building, Main Street, beginning Tuesday morning, August 10, at 10.30 o'clock. The sessions will continue on Wednesday, Thursday, Friday, Saturday and Monday, August 11, 12, 13, 14 and 16.

The Executive Committee of the Commissioners will meet on Monday, August 9, 8.30 P. M., in the Music Room, Mezzanine Floor, Hotel Utah.

(The following program is subject to change in the order, by vote of the Executive Committee at its meeting to be held Monday, August 9.)

Address of welcome by one of the United States Senators from Utah.

Address of welcome by the Mayor of Salt Lake City.

Roll call of the Commissioners.

Address of the President.

Reports of other officers.

Appointment of Auditing and Nominating Committees.

Report of Executive Committee.

Report of the Committee on Plan, Scope and Co-ordination.

Consideration of Uniform Acts on the following subjects, the order of their consideration and the time to be allotted to each to be determined by the Executive Committee at its meeting to be held on the evening of August 9, at the Hotel Utah, Salt Lake City, namely:

a. Incorporation Act.
b. Automobile Act.
c. Limited Partnership Act.
d. Act Embodying the Torrens System and Registration of Land Titles.
e. Conveyances Act.
f. Wills Act.
g. Act providing for Interstate Extradition of Lunatics.
h. Reports of Other Committees and Acts Proposed by Some of Them.

Appointment of new committees.

Adjournment on August 16.

American Institute of Criminal Law and Criminology

The seventh annual meeting of the American Institute of Criminal Law and Criminology will convene on Monday, August 16, 10 A. M., in Barrett Hall, Main Street, one-half block north of Hotel Utah.

FIRST SESSION.

MONDAY, AUGUST 16, 10 A. M.

Annual address by President Robert Ralston, of Pennsylvania.
Report of Secretary.
Report of Treasurer.
Report of Executive Board.

REPORT OF COMMITTEE A. "Employment and Compensation of Prisoners," William M. Gemmill, of Illinois, Chairman.
Discussion.

REPORT OF COMMITTEE B. "Insanity and Criminal Responsibility," Edwin R. Keedy, of Illinois, Chairman.
Discussion.

REPORT OF COMMITTEE C. "Judicial Probation and Suspended Sentence," Wilfred Bolster, of Massachusetts, Chairman.
Discussion.

REPORT OF COMMITTEE D. "Classification and Definitions of Crime," John Lisle, of Pennsylvania, Chairman.
Discussion.

SECOND SESSION.

MONDAY, AUGUST 16, 2. P. M.

REPORT OF COMMITTEE E. "Proposed Draft of a Code of Criminal Procedure," Quincy A. Myers, of Indiana, Chairman.

REPORT OF COMMITTEE F. "Indeterminate Sentence, Release on Parole and Pardon," Edward Lindsay, of Pennsylvania, Chairman.
Discussion.

REPORT OF COMMITTEE G. "Crime and Immigration," Grace Abbott, of Illinois, Chairman.
Discussion.

REPORT OF COMMITTEE H. "Sterilization of Criminals," Joel D. Hunter, of Illinois, Chairman.
Discussion.

REPORT OF SOCIETY OF MILITARY LAW.
Appointment of Committee on Nominations.

THIRD SESSION.

MONDAY, AUGUST 16, 8 P. M.

ANNUAL ADDRESS. Hampton L. Carson, of Pennsylvania. "A Sketch of the Development of English Criminal Law."

REPORT OF COMMITTEE I. "Co-operation with Other Organizations," William O. Hart, of Louisiana, Chairman.

REPORT OF COMMITTEE II. "Translation of European Treatises on Criminal Science," John H. Wigmore, of Illinois, Chairman.
Discussion.

REPORT OF COMMITTEE III. "Criminal Statistics," John C. Ruppenthal, of Kansas, Chairman.
Discussion.

REPORT OF COMMITTEE IV. "State Societies and New Memberships," Harry V. Osborne, of New Jersey, Chairman.

REPORT OF COMMITTEE VI. "Promotion of Institute Measures," Frederic B. Crossley, of Illinois, Chairman.
Discussion.

REPORT OF COMMITTEE VII. "Publications" (THE JOURNAL), Robert H. Gault, of Illinois, Chairman.
Discussion.

Report of Committee on Nominations.
Election of Officers.
Unfinished Business.
New Business.

ENTERTAINMENTS

Concert

A concert (choir of 500 voices with organ) will be given to members and guests of the Association and ladies accompanying them, in the Tabernacle, on Tuesday, August 17, at 9.00 P. M., following the annual address. *Tickets for seats in the reserved section of the Tabernacle may be obtained at the Secretary's office, Hotel Utah.*

Reception

A reception will be given by the President to members and guests of the Association and ladies accompanying them, on Tuesday, August 17, at 10 P. M., in the Ball Room, Mezzanine Floor, Hotel Utah. *No tickets of admission will be required.*

Excursion

The Utah State Bar Association will give an excursion by special train to Saltair Beach for members and guests of the Association and ladies accompanying them, on Wednesday, August 18, at 3 P. M. Afternoon tea will be served in the Beach Pavilion. *Tickets may be obtained at the Secretary's office, Hotel Utah.*

Annual Dinner

The Annual Dinner of the Association will be given at the Hotel Utah, on Thursday evening, August 19, at 7 o'clock. Alton B. Parker, of New York, former President of the Association will preside.

For additional information as to the dinner, see " Special Announcements " on the next page.

SPECIAL ANNOUNCEMENTS

The Annual Dinner will be given as above noted. A charge of $5 for dinner ticket will be made to each member and delegate. A limited number of guest tickets may be furnished to members at a charge of $7 each.

Members are requested to apply promptly for dinner tickets, which will be on sale at the Treasurer's office, Hotel Utah, on and after Monday, August 16, 10 A. M. *Positively no tickets will be sold after 12 o'clock noon Thursday, August 19.*

The United States Postal authorities will establish for the particular convenience of the members of the American Bar Association attending the meeting, a *Branch Station* for the delivery of mail, in a room opening off the lobby, Hotel Utah. Stamps, stamped goods, money orders and other postal necessities may be secured, letters registered and mailed, parcels insured and inquiries made at this branch office.

The Postmaster at Salt Lake City requests that, to facilitate distribution, all members have their mail addressed care of the "**American Bar Association.**"

The Remington Typewriter Company will loan the machines needed for the Secretary's office, and also furnish a public stenographer who will at reasonable rates do stenographic work desired by members.

Members of each state delegation will meet in Assembly Hall immediately upon adjournment of the first business session (Tuesday, August 17, 10 A. M.) for the purpose of nominating a member of the General Council, and also to select a Vice-President and Local Council for each state. Delegations desiring to meet at a place other than Assembly Hall should notify the Secretary prior to the opening of the first business session so that appropriate announcement may be made.

No list should contain more than six names in all; one for General Council, one for Vice-President and four for Local Council. All must be members of the Association.

Lists should be left at the Secretary's office, Hotel Utah, not later than 4 P. M. on Tuesday, August 17, in order that they may

be prepared for the printer and issued to members on Wednesday morning.

Election of the General Council will take place at the business session of Tuesday evening, August 17.

The attention of standing committees is called to the provision of the By-Laws by which they are required to meet every year, at such hours as the respective Chairmen may appoint. All such committees will meet at the Hotel Utah on Tuesday morning, August 17, at 9 o'clock, when a separate room for each committee will be assigned.

The Special Committee on Reports and Digests, consisting of one member from each state, which was authorized by resolution of October 21, 1914, has just been completed. Thomas H. Reynolds, of Missouri, Chairman, has called an organization meeting of the committee for Wednesday, August 18, the hour and place of meeting to be announced on August 17.

The attention of all committees is called to the following provision of the By-laws:

"All Committees may have their reports printed by the Secretary before the Annual Meeting of the Association; and any such report, containing any recommendation for action on the part of the Association, shall be printed, together with a draft of bill embodying the views of the Committee, whenever legislation shall be proposed. Such report shall be distributed by mail by the Secretary to all the members of the Association at least fifteen days before the Annual Meeting at which such report is proposed to be submitted. No legislation shall be recommended or approved unless there has been a report of a committee, either in favor of or against the same, and unless such legislation be approved by a two-thirds vote of the members of the Association present. Where the report of a committee has been printed it shall not be read before a meeting of the Association unless directed by a majority vote of those present at the meeting, but the chairman of the Committee shall state the purport and substance thereof to the meeting.

It is desirable that all nominations of new members be submitted to the General Council at its first session on Tuesday morning. Forms will be furnished by the Membership Committee at the headquarters of the Association.

The dues are $6 a year for members, inclusive of cost of JOURNAL. Delegates who are not members pay no dues. There is no initiation fee. There are no additional dues for membership in a Section.

In preparing for debate, members are requested to bear in mind the By-law that no person shall speak more than ten minutes at a time nor more than twice on one subject.

Hotel Reservations

William H. Leary, Secretary of the State Bar Association of Utah, 601 Newhouse Building, Salt Lake City, Utah, has kindly consented to take charge of the reservations for members and delegates. In writing to Mr. Leary please state preference of hotels, time of arrival, period for which rooms are desired, whether with or without bath, and how many persons will occupy each room.

A list of available hotels and railroads will be found at the back of this JOURNAL, pp. IX and X.

By order of the Executive Committee.

GEORGE WHITELOCK, *Secretary,*
W. THOMAS KEMP,
GAYLORD LEE CLARK, } *Assistant Secretaries,*
1416 Munsey Building, Baltimore, Md.

July 1, 1915.

CHRONOLOGICAL RÉSUMÉ

AUGUST, 1915.

MONDAY, 9TH.

8.30 P. M. Executive Committee of Commissioners on Uniform State Laws. *Music Room, Hotel Utah.*

TUESDAY, 10TH.

10.30 A. M. Opening Session of Conference of Commissioners on Uniform State Laws. *United States District Court, Federal Building, Main Street.*

MONDAY, 16TH.

Closing Sessions of Conference of Commissioners on Uniform State Laws.

10.00 A. M. Institute of Criminal Law and Criminology. *Barrett Hall, Main Street.*

Address of Robert Ralston, President.

2.00 P. M. Institute of Criminal Law and Criminology. *Barrett Hall, Main Street.*

2.30 P. M. Section of Legal Education. (Session of State Bar Examiners and Law School Teachers.) *Ball Room, Newhouse Hotel, Main and Fourth South Streets.*

3.00 P. M. Section of Patent, Trade-Mark and Copyright Law. *United States Circuit Court Room, Federal Building, Main Street.*

Annual Address of Chairman, Robert H. Parkinson.

7.00 P. M. Informal Dinner, Judicial Section. Supper Room, *Hotel Utah.*

8.00 P. M. Institute of Criminal Law and Criminology. *Barrett Hall, Main Street.*

Annual Address, Hampton L. Carson.

9.00 P. M. Executive Committee of the Association. *Music Room, Mezzanine Floor, Hotel Utah.*

TUESDAY, 17TH.

9.00 A. M. General Council of the Association. *Barrett Hall, Main Street.*

10.00 A. M. First Session American Bar Association. *Assembly Hall.*

Address of Welcome, George Sutherland.

President's Address, P. W. Meldrim.

12.00 M. Meetings of State Delegations for nomination of General Council and Vice-Presidents and Local Councils. *Assembly Hall.*

2.00 P. M. Judicial Section. *Ball Room, Mezzanine Floor, Hotel Utah.*
Chairman's Address, Orrin N. Carter.
Address, Mr. Justice Van Devanter.

2.00 P. M. Comparative Law Bureau. *Room C-38, Hotel Utah.*
Annual Address of the Director, Simeon E. Baldwin.

3.30 P. M. Section of Legal Education. *Ball Room, Newhouse Hotel, Main and Fourth South Streets.*
Annual Address of the Chairman, Charles E. Shepard.

8.00 P. M. Second Session American Bar Association. *The Tabernacle.*
Annual Address, Joseph W. Bailey.
Election of General Council.

9.00 P. M. Concert in the Tabernacle.

10.00 P. M. President's Reception. *Ball Room, Mezzanine Floor, Hotel Utah.*

WEDNESDAY, 18TH.

10.00 A. M. Third Session American Bar Association, *Assembly Hall.* Presentation of Reports of Committees.

3.00 P. M. Excursion to Saltair Beach; afternoon tea in Beach Pavilion.

8.00 P. M. Fourth Session American Bar Association. *Assembly Hall.* Address, Simeon E. Baldwin.
Unfinished Reports of Committees.

THURSDAY, 19TH.

10.00 A. M. Fifth Session American Bar Association. *Assembly Hall.* Address, Felix Frankfurter.
Unfinished Business.

2.30 P. M. Section of Legal Education. *Ball Room, Newhouse Hotel, Main and Fourth South Streets.*

7.00 P. M. Annual Dinner American Bar Association. *Hotel Utah.*

OFFICERS

1914–1915.

PRESIDENT,

PETER W. MELDRIM, *Savannah, Ga.*

SECRETARY,

GEORGE WHITELOCK, *Baltimore, Md.*

TREASURER,

FREDERICK E. WADHAMS, *37 Tweddle Building, Albany, N. Y.*

ASSISTANT SECRETARIES,

W. THOMAS KEMP, *1416 Munsey Building, Baltimore, Md.*
GAYLORD LEE CLARK, *1416 Munsey Building, Baltimore, Md.*

EXECUTIVE COMMITTEE,

EX OFFICIO
THE PRESIDENT,
THE SECRETARY,
THE TREASURER,
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W. M. CROOK, Beaumont, Tex., *Vice-President.*
GEORGE B. YOUNG, Newport, Vt., *Secretary.*
THOMAS A. JENCKES, Providence, R. I., *Treasurer.*

AMERICAN INSTITUTE OF CRIMINAL LAW AND CRIMINOLOGY.

ROBERT RALSTON, Philadelphia, Pa., *President.*
EDWIN M. ABBOTT, Philadelphia, Pa., *Secretary.*

II

GENERAL ANNOUNCEMENTS

LORD ALVERSTONE.

The Rt. Hon. Viscount Alverstone, late Lord Chief Justice of England, has presented to the members of the Association a copy of his published memoirs entitled "Recollections of Bar and Bench," inscribed by him as follows:

To the Members of the American Bar Association with best wishes from Viscount Alverstone the author, and owing regrets that he was never able to accept the invitations received in these pages to visit his friends of the American Bar Association

Alverstone

February 1915

The Executive Committee, in exercise of the power vested in it by the Constitution, has unanimously elected Viscount Alverstone to honorary membership in the Association. In response

to the notification of election the Secretary has received from him the following cablegram:

"Much complimented. Gratefully accept honorary membership of Bar Association. Writing. ALVERSTONE."

Confirming the cablegram by mail Lord Alverstone says:

"I shall always regard my election as an honorary member of the Bar Association as the greatest compliment that has ever been paid me."

SECRETARY LANE.

Hon. Franklin K. Lane, of California, Secretary of the Interior, who, as announced in the April JOURNAL, was expected to deliver an address before the Association at Salt Lake City, has been obliged by reason of official duties at Washington to withdraw his acceptance of the invitation extended to him by the committee.

SOUTH AMERICAN JURISTS.

It was expected, as announced in the April number of the JOURNAL, that three eminent South Americans would be guests of the Association at its Salt Lake meeting in August, and that one of them would deliver an address before the Association. It is regretted that the gentlemen to whom the invitations were extended have been unable to accept them.

Hon. Alfred Vasquez Acevedo, of Montevideo, who it was hoped would deliver an address, was obliged for reasons of health to decline the invitation of the committee. In his letter to the Secretary he says:

"Since early youth I am an admirer of your great nation. I have read passionately the history of United States; I have wondered at its political and social institutions, and admired the virtues of Washington, Franklin, Madison, Adams, Jefferson and many other of your eminent citizens. In my humble works about legislation and education I have taken great profit from American books, and in my political life I have had always present in my mind the advices and principles taught by Webster, Marshall, Hamilton, Jay, Cooley, Pomeroy, W. Wilson, etc.

"I am also somewhat acquainted by my lectures with all the beauties of your territory, and with the extraordinary development of your industries, of your commerce and of your educational and moral institutes.

"Therefore it would be for me not only a great honor to accept your invitation, but also a deep pleasure for the occasion offered to me of visiting and seeing all the marvels of your wonderful country."

Senator Antonio José Uribe, of Bogotá, Colombia, who, owing to the meeting of the Colombian Senate, was obliged regretfully to decline the invitation of the Executive Committee to attend the annual meeting, has presented to the Association the following volumes:

Derecho Mercantil Colombiano (Edicion Especial);
Tratado de Derecho Civil Colombiano;
La Reforma Administrativa; and
Anales Diplomaticos y Consulares de Colombia (in IV Vols.).

All of these books are inscribed by the author as follows:

Para la "American Bar Association,"
En testimonio de gratitud,
Antonio José Uribe.
Mayo: 1915.

CHARLES FREEMAN LIBBY.

Charles Freeman Libby, President of the Association 1909-1910, and twice a member of its Executive Committee, died at his summer home in Grasmere, Maine, on Thursday, June 3, 1915, as a result of congestion of the brain, following a period of impaired health.

Mr. Libby was one of the most prominent citizens of Portland, Maine, where he had distinguished himself as a lawyer, business man and public official. He had been Mayor of the city and President of the State Senate.

Mr. Libby's connection with the Association (which he joined in 1882) was one of the deepest interests and greatest pleasures of his life. His professional and business activities were never permitted to crowd aside his work for the Association, nor to prevent his attendance at its meetings.

Hollis R. Bailey, of Massachusetts, was appointed by the President to attend the funeral services in Portland on Sunday, June 6, 1915, as the representative of the Association, and acted as one of the honorary pallbearers.

MEMBERS EXPECTING TO ATTEND ANNUAL MEETING.

The Secretary has received to date (July 12) reply postcards from 653 members of the Association indicating their purpose to attend the annual meeting at Salt Lake.

MEETINGS OF BAR ASSOCIATIONS.

THE MINNESOTA STATE BAR ASSOCIATION will hold its annual convention at St. Cloud, Minn., August 5, 6 and 7, 1915.

A joint meeting of the WASHINGTON AND OREGON STATE BAR ASSOCIATIONS will be held at Portland, Oregon, August 23, 24 and 25, 1915. Hon. William Howard Taft, of Connecticut, will deliver an address. A cordial invitation is extended to all members of the American Bar Association to attend this meeting.

THE MISSOURI BAR ASSOCIATION will hold its thirty-third annual meeting in Kansas City, in September, 1915. John H. Wigmore, of Illinois, has accepted an invitation to be present.

THE CALIFORNIA STATE BAR ASSOCIATION will hold its annual meeting August 23, 24 and 25, 1915, at San Francisco, with headquarters at the Palace Hotel. Arrangements are being made for the entertainment of lawyers visiting San Francisco at that time, the details of which have not yet been completed.

Members of the Association intending to visit San Francisco and the Exposition can reserve hotel accommodations by communicating with A. E. Bolton, 707 Crocker Bldg., San Francisco, and stating the kind and character of reservations desired.

Reservations should be made by August 1, 1915.

The Palace Hotel, the St. Francis, and other hotels of the city generally, announce that they have adopted the policy of not increasing their rates during the Exposition.

LAWYERS' DAY AT THE EXPOSITION.

Jesse W. Lilienthal, of San Francisco, is Chairman of the Committee of Arrangements of the California Bar Association, and for the setting apart of a special day at the Exposition to be known as Lawyers' Day. Mr. Lilienthal states that the day selected will probably be one of those on which the California Bar Association holds its annual meeting (August 23-25), and that an attractive program is being prepared.

INVITATION TO NEVADA.

The members of the NEVADA BAR wish to call the attention of those attending the meeting at Salt Lake that by combining so that there are 125 or more in one party, they can secure a

special train. It is expected that a great many of the gentlemen attending will go on to San Francisco to the fair. The members of the Nevada Bar most urgently invite as large a delegation as possible to stop off at Reno, and permit them to show the delegation the city of Reno and surroundings, and to tender them a luncheon or other appropriate evidence of hospitality. They also offer the further suggestion that the same party go on to Truckee, near the summit of the Sierra Nevada, a distance of 32 miles west of Reno, and that from there they go to Lake Tahoe, 15 miles distant, and see that wonderful body of water. The lake has an elevation of 6225 feet and is surrounded by mountains, some of them over 11,000 feet high. It is one of the most beautiful spots in America.

If some concentrated action is taken upon arrival at Salt Lake, arrangements can quickly be made to carry out this program.

PERSONAL NOTICE.

Albert L. LeGrand, of the Paris Bar, who attended the Milwaukee meeting of the Association in 1912, is now captain of the 18th Company of the 306th French Infantry, as shown by his letter to the Secretary of May 31, 1915.

Frederick P. Walton, K. C., an honorary member of the Association, who was formerly Dean of the Faculty of Law of McGill University, Montreal, has severed his connection with the University. He is now at the Sultanieh School of Law, Cairo, engaged as chief draftsman of a revision of the Civil Code for Egypt.

FUND FOR RELIEF OF REFUGEE EUROPEAN LAWYERS.

The Rt. Hon. Sir Walter G. F. Phillimore, Lord Justice of Appeal, and J. Arthur Barratt (an American citizen), of London, England, who were selected by the Special Committee to distribute the Relief Funds transmitted to Europe, have found ample opportunity to use them for the benefit of refugee lawyers. The first moneys in their hands helped to bury the dead child of a homeless Belgian lawyer. A member of the Association, who has been especially active in forwarding the movement for raising our

relief fund, writes the Secretary that the refugee lawyers needing aid, in England alone, number about four hundred, and adds:

"Expressions of the deepest gratitude come from these poor fellows for the aid prompted by the brotherly feeling of the American lawyers. To have rendered so sure and welcome relief must be a satisfaction to our members; but beyond that they may be sure that the spirit in which it was sent and the spirit in which it has been received tell of an increase of sympathy and fellowship among the lawyers of all countries—something that will make for better understanding and good feeling among nations. Such a subscription as that of the American Bar Association can but broaden all who have to do with it."

The following is the account of Frederick E. Wadhams, as Treasurer of the Special Committee for the Relief of Refugee European Lawyers:

DR.

To cash received as follows:

294	remittances of	$1.00	$294.00
6		1.50	9.00
304		2.00	608.00
105		2.50	262.50
106		3.00	318.00
1		3.50	3.50
8		4.00	32.00
1159		5.00	5,795.00
1		5.10	5.10
2		5.15	10.30
2		6.00	12.00
1		7.00	7.00
1	(50 francs)	9.38	9.38
102		10.00	1,020.00
1		10.50	10.50
5		15.00	75.00
9		20.00	180.00
31		25.00	775.00
7		50.00	350.00

Bar Associations:

Newport News Bar Assn., Va.	$24.00
Michigan State Bar	31.00
Winnebago Co. Bar, Wis.	35.00
Jackson Co. Bar, Mich.	52.00
Niagara Co. Bar, N. Y.	54.00
Franklin Co. Bar Assn., Ohio	60.00

Cumberland Bar Assn., Maine	$	65.00	
Omaha Bar Assn., Neb.		73.04	
San Diego Bar Assn., Cal.		78.00	
Lawyers' Club, Essex Co., N. J.		95.50	
Albany County Bar Assn., N. Y.		100.00	
Lawyers' Club, Philadelphia, Pa.		100.00	
Michigan State Bar Assn.		173.50	
Bar Assn. City of Boston, Mass.		258.00	
Massachusetts State Bar Assn.		426.45	
New York State Bar Assn.		1,271.90	
			2,897.39
			$12,673.67

1915. Cr.

Mch. 20. By cash sent to committee in England (£1500)	$	7,196.25	
By cash paid Albany Argus for 2c. stamped envelopes, cards, return envelopes, circulars, etc.		362.50	
By cash paid miscellaneous expenses		26.11	
June 15. By cash sent to committee in England (£1000)		4,782.50	
			12,367.36
By cash on hand, June 25, 1915, to balance			$306.31

FRIEDRICH MEILI.

BY

ARTHUR K. KUHN.

Professor Friedrich Meili, who died at his home in Zurich, Switzerland, on January 15, 1914, was one of the few Continental authorities in the field of international and comparative jurisprudence personally known to a large number of the American Bar, and one of the first honorary members of the Comparative Law Bureau of this Association.

He was born in Hinwil, in the Canton of Zurich, Switzerland, in 1849. Like all Swiss youths, he enjoyed the advantages of an exceptionally good common school education and after preparing for the Bar, he supplemented his local training at the universities of Munich and Paris and even acquired a working knowledge of the English common law.

Upon his return to Zurich, he developed an active practice, particularly in connection with questions arising out of the development of the technical arts. He was one of the first to work out a system of law, both public and private, applicable to the telegraph, his book, "Das Telegrafenrecht," appearing as early as 1871. This was followed by a study of the new problems arising from the practical introduction of the telephone (Das Telephonrecht, 1885). About the same time, he made a careful review of the nature and effect of all existing treaties applicable to traffic upon railroads passing over international boundaries and engaged in through traffic (1887).

In 1885, he was made professor of law at the University of Zurich, and, though continuing also in general practice for many years, he was increasingly drawn to the scientific advancement of the law. He fully shared a sentiment among jurists in many countries that a successful commerce is dependent upon a successful adjustment of the spheres of sovereign systems of law.

The Italian statesman, Mancini, in the early eighties, endeavored to bring the nations of Europe together upon a common basis, not at all for a uniformity of law, but for a uniformity in the rules for the application of law. Meili not only supported the movement by favoring the establishment of diplomatic conferences, but also published a number of preparatory studies to serve as a basis for deliberation. In 1892, a year before the first conference, he published his Geschichte und System des internationalen Privatrechts im Grundriss. When the first diplomatic conference on private international law was held at The Hague in 1893, he was appointed to represent his government and continued to do so until the time of his death. When four conferences had been held resulting in the adoption of general treaties by many nations upon such important topics as the conflict of laws in respect of marriage, divorce and guardianship, he considered the time ripe for the publication of text-books not only setting forth in systematic form the doctrines recognized by the chief countries of the world, but also his critical observations upon the operation of the treaties themselves. In 1902 he published his Handbuch des internationalen Civil- und Handelsrecht, which was afterwards translated into English under the title "International Civil and Commercial Law" (Macmillan, 1905).

It also appeared in Japanese. This was followed in 1904 by Das internationale Civilprozessrecht; in 1909, Das Lehrbuch des internationalen Konkursrechts; and in 1910, Das Lehrbuch des internationalen Strafrechtes und Strafprozessrechtes.

As the titles show, he considered it advantageous to deal separately with each important branch of jurisprudence in its international aspects and consistently divided off procedure from substantive law. Extradition is dealt with under the rubric of international criminal procedure. This separation of topics is particularly justified when we remember that on the Continent, offenses committed without the jurisdiction become, under certain circumstances, cognizable in the local courts. Furthermore, rules regarded by the Anglo-American jurists as remedial, are dealt with, in European countries, as part of substantive right.

Meili's address before the Universal Congress of Lawyers and Jurists at St. Louis, in 1904, upon the subject of The Hague conference on private international law, was particularly illuminating in that he outlined what he considered to be the proper attitude toward them of Great Britain and the United States. He was desirous that countries of the Anglo-American sphere should participate, even though they might be unable or unwilling to ratify any of the treaties. It was his hope that their weight in council would furnish a desirable counterbalance to what he deemed the exaggerated importance given by Continental authorities to the *lex patriæ* in the application of private law, and thought that this would result in the adoption of some *media sententia*. He was always enthusiastic in his belief that a stimulating influence was sure to follow from an interchange of ideas between jurists of civil law countries and those of the English common law.

He was one of the most active members of the Institute of International Law and his lucid and forceful arguments gained him many admirers within that body. When the latest inventions of the wireless telegraph and airship came into practical use, he was again among the first to blaze a path in jurisprudence which these new agencies might follow. His short treatises: Die Drahtlose Telegrafie im internen Recht und Völkerrecht (1908) and Das Luftschiff im internen Recht und Völkerrecht (1908) are recognized as pioneers in their respective fields, and

though both arts have progressed marvelously since his essays were published, his anticipations of the problems as well as his suggestions for their solution, have, for the most part, been borne out by subsequent developments. True, he was one of those who favored the freedom of the airspace, hoping that the broader view of sovereignty which might accompany it might make for a freer commerce and a surer peace. He never doubted the strict rights of sovereignty, but hoped for mutual concessions by international agreement. His error in this regard, for subsequent events proved it to be such, was due to his cosmopolitan optimism. This was characteristic of the man. His mind operated upon broad lines and though his writings show the most painstaking research and careful reflection, he was inclined to avoid the detailed and hairsplitting argument which, only too often, in Europe as elsewhere, is mistaken for profundity. He sought historical bases for his arguments and was fond of referring to "the solidity of historical foundation." One of our own great international authorities recounts that he visited the home of Meili one fine summer evening and found him sitting at the window intently reading by the waning light a great quarto-volume of the *Corpus Juris*. He never hesitated to admit to all his friends that the great book of the law was a never-ending source of new inspiration.

Governments of European countries frequently applied to him for legal opinions on intricate questions of an international character. He advised the governments of Denmark and Austria in important litigation. He represented Portugal in the Delagoa Bay controversy. He made an extended report at the request of shareholders of the Netherlands South African Railroad Company as to their rights and possible remedies against Great Britain as successor state of the South African Republic; he was retained by Russia when certain of its governmental deposits were attached in the hands of Berlin banks. Those familiar with these disputes know how frequently the ultimate result confirmed the correctness of his views.

III.

REPORTS OF COMMITTEES.

REPORT

OF THE

SPECIAL COMMITTEE TO PRESENT BILLS TO CONGRESS RELATING TO COURTS OF ADMIRALTY.

(To be presented at the meeting of the American Bar Association, at Salt Lake City, Utah, August 17-19, 1915.)

To the American Bar Association:

The special committee to present to Congress three bills relating to courts of the United States sitting in admiralty, respectfully reports as follows:

The Lien Bill, having been heretofore approved by the President, as already reported, needs no further notice; the bill to authorize suits against the United States for damages caused by government vessels has made no progress since the last annual meeting of the Association.

The bill to provide a remedy for death by negligence upon the high seas and other navigable waters has received much attention from the special committee of the Association. Having been introduced by Representative Peters of Massachusetts in the Sixty-third Congress (H. R. No. 6143), it was on December 22, 1913, reported with unanimous recommendation from the Committee on the Judiciary of the House, certain unimportant amendments having first been made in committee.

On December 16, 1914, Chairman Webb called up the Peters Bill practically in the form last submitted to the Association, only a few minor changes having been afterwards made by the Judiciary Committee. Congressman Bryan of Washington, laboring perhaps under a misconception as to the scope of the measure, vigorously contested it. He seemed to think that the committee proposed a workmen's compensation law for the high seas, and not to realize that the sole purpose is to provide a right of action for death in the admiralty where a remedy exists for injuries not resulting in death; or in other words, to amend the

maritime law of the United States by statute as the common law of the states has been amended by state legislation. In consequence of Mr. Bryan's opposition, adjournment was taken without action.

Thereafter, your committee, at the request of Mr. Webb, endeavored to answer the criticisms of Mr. Bryan, and in consequence much correspondence and many personal interviews ensued, members of the special committee and of the committee of the Maritime Law Association appearing in advocacy of the bill before the House committee.

Further amendments having been made by the Judiciary Committee, the bill came up for final passage in the House on January 6, 1915, when it was strongly supported by Chairman Webb, by Representative Montague of Virginia, and others; and despite the unabated opposition of Mr. Bryan passed the House by the encouraging vote of 284 to 14.

Unfortunately, however, the bill was, prior to passage, amended from the floor by the addition of a section, which sought to establish a new standard of limitation of liability, extending even to pending cases. The obvious purpose of this amendment was to govern the special case of the "Titanic" in the Southern District of New York, in which case the Supreme Court of the United States had already held (May 25, 1914) the measure of liability fixed by the American law in limitation proceedings to be controlling, although the claimants had vigorously contended in favor of applying the more liberal British law to the case. The effect of the amendment would have been to increase the fund for distribution from $91,805.54 to $2,500,000 (approximately).

Moreover, the entire amendment, thus interpolated into the bill immediately prior to passage by the House, was foreign to the subject matter of the measure, which bears no relation to limitation of liability by shipowners, but is solely "An Act Relating to the Maintenance of Actions for *Death* on the High Seas and other Navigable Waters."

In addition, the bill was so amended at the last moment, as to be capable of the construction that two recoveries might be had—one under the state act and one under the federal act.

These changes rendered the bill hopelessly objectionable to the special committee of the Association as well as to the committee of the Maritime Law Association, and no report from the Senate Judiciary Committee with adequate changes having been possible in view of the divergent views of those advocating the adoption of the law, the reform long advocated by the Association must lie over until the next session of Congress.

Since the adjournment on March 4, 1915, the Maritime Law Association, in which the movement for the reform originated, has adopted a resolution directing its committee on the death statute to re-draft the bill and to report at a meeting of that Association to be held on November 22, 1915, in New York City.

The special committee of the Association proposes, if continued, to take up with the committee of the Maritime Law Association the matter of reframing the bill so as to obviate some of the difficulties which have developed, and thereafter to bring about its re-introduction at the next session of Congress, which opens December 6, 1915.

Therefore, the special committee now recommends that it be further continued, with directions to endeavor by all proper measures to procure the passage of the proposed death statute, and also of the proposed statute to authorize suits against the United States for damages by government vessels, in conformity with the policy heretofore declared by the Association, and with power to make, in the discretion of the special committee, such amendments of phraseology in either of the bills as it may deem appropriate or expedient.

All of which is respectfully submitted.

GEORGE WHITELOCK, *Chairman,*
EDWARD G. BENEDICT,
ROBERT M. HUGHES,
BENJAMIN THOMPSON,
JAMES H. HAYDEN,
Committee.

June 15, 1915.

REPORT

OF THE

COMMITTEE ON COMMERCIAL LAW.

(To be presented at the meeting of the American Bar Association, at Salt Lake City, Utah, August 17-19, 1915.)

To the American Bar Association:

Your Committee on Commercial Law reports as follows:

I. Preliminary.

The United States Senate printed the last annual report of the Committee on Commercial Law of the American Bar Association as Senate Document No. 605, Sixty-third Congress, second session. That report was thereby given wide publicity.

II. Bankruptcy.

By the expiration of the Sixty-third Congress the various pending bills to either repeal or amend the National Bankruptcy Act died. In view of the fact that at every session of Congress bills to repeal the National Bankruptcy Act are introduced, your committee feels that the American Bar Association should pass a resolution renewing its adherence to this statute and authorizing your Committee on Commercial Law to oppose any measure that may be introduced into the Sixty-fourth Congress to repeal the same.

III. National Legislation as to Reciprocal Rights, Duties and Obligations of Common Carriers and Shippers in Interstate and Foreign Commerce.

Your committee in its last report pointed out that Cummins Senate Bill No. 4522 had passed the United States Senate on June 4, 1914. Your committee further reported that it could not recommend the passage of said bill in the " form " in which it had passed the Senate, and in lieu thereof recommended the passage of a law by Congress creating a commission to codify the law as to the reciprocal rights, duties and obligations of common

carriers and shippers in interstate and foreign commerce rather than to remedy any evils by "piece-meal" legislation. The American Bar Association indorsed the recommendation of the committee for the creation of such commission. Notwithstanding the crudeness of the Cummins Act as it passed the Senate, the same was enacted by the House of Representatives on March 4, 1915, in the exact form in which it had passed the Senate and was signed by the President.

The crudeness of this measure threw the whole subject of limitations of liabilities of common carriers into such confusion that the Interstate Commerce Commission ordered an investigation and the whole subject was submitted to the Interstate Commerce Commission on April 20, 1915, and decided May 7, 1915. The opinion of the commission is reported in 33 I. C. C. R. 682. A copy thereof is hereto attached and marked "Exhibit A" for your information.

Your committee recommends that the American Bar Association adopt a resolution in substance as follows:

(a) To authorize the executive committee of the American Bar Association, in its discretion, to appropriate a sufficient sum of money to enable the Committee on Commercial Law to employ a draftsman to prepare a tentative draft of a bill as herein after described;

(b) That if the executive committee shall appropriate said money, said Committee on Commercial Law shall be authorized to employ a draftsman to prepare a tentative draft of a bill codifying the law covering the reciprocal rights, duties and obligations of common carriers and shippers in interstate and foreign commerce;

(c) That if said Committee on Commercial Law shall employ such draftsman, said tentative draft of said bill shall be prepared under the supervision and direction of and subject to the revision of said committee; and

(d) That when said tentative draft of said bill shall have been completed, said committee shall submit same at some future meeting of the American Bar Association for its consideration and action.

IV. National Legislation on Bills of Lading.

The bill "To Make Uniform the Laws of the Various States on Bills of Lading," recommended by the Commissioners on Uniform State Laws in National Conference and indorsed by the American Bar Association, has now been passed in fifteen states and one territory as follows: Alaska, Connecticut, Idaho, Illinois, Iowa, Louisiana, Maryland, Massachusetts, Michigan, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont and Washington.

The Pomerene Bill relating to bills of lading in interstate and foreign commerce was modeled on the Uniform State Act and indorsed by the American Bar Association on several occasions and has now been twice unanimously passed by the United States Senate. It has been indorsed by practically every commercial organization in the United States and particular attention is called to the fact that it has been indorsed by the Fifth International Congress of Chambers of Commerce and Commercial and Industrial Associations, the Chamber of Commerce of the United States, The National Industrial Traffic League, The Grain Dealers' National Association, the Millers' National Federation, The American Bankers' Association, The National Association of Tanners, The National Implement and Vehicle Manufacturers' Association, The National Paint, Oil and Varnish Association, The National Piano Manufacturers' Association, The National Poultry, Butter and Egg Association, The National Shoe Wholesalers' Association, The National Electric Lamp Association, The National Petroleum Association, The National League of Commission Merchants and The Council of Grain Exchanges of North America.

Notwithstanding the unanimous indorsement of the Pomerene Bill by all commercial organizations and that it has twice unanimously passed the United States Senate, yet it has encountered difficulties in getting any consideration in the House of Representatives. Sections 2, 3 and 10 of the Pomerene Bill contained provisions relating to the form and contents of bills of lading and as to them the Interstate Commerce Commission has expressed an opinion to the Chairman of the House Committee on Interstate and Foreign Commerce that the subject matter of said Sections 2, 3 and 10 is already amply provided for in the pro-

visions of the act of June 18, 1910, amending and supplementing the Act to Regulate Commerce as to the issuance, form and substance of bills of lading, but the Interstate Commerce Commission offered no objections to the other provisions of the Pomerene Bill. Your committee concedes there is much force and merit in what has been said by the Interstate Commerce Commission as to said Sections 2, 3 and 10 of the Pomerene Bill and as their presence has proven an insurmountable obstacle to the passage of this legislation in the House, your committee recommends that they be omitted. Your committee has appended hereto as a part of this report as "Exhibit B" said Pomerene Bill, with Sections 2, 3 and 10 omitted. Your committee has likewise made slight changes in the title to the bill and in Sections 14, 20, 21, 37, 45 and 46 as numbered in "Exhibit B" hereto attached which are, however, merely for the purpose of perfecting the bill in the light of practical criticism, the provisions of the Interstate Commerce Act, and the decisions of the Interstate Commerce Commission and of the courts.

Your committee has studied with much interest "The History and Present Condition of the Bill of Lading," by Mr. W. P. Bennett, published by the University Press, Cambridge, England, in 1914, being the York Prize Essay for the year 1913.

Your committee recommends that the American Bar Association indorse the "Bill Relating to Bills of Lading in Interstate and Foreign Commerce" hereto attached and marked "Exhibit B."

V. Uniform Commercial Legislation Throughout the Commercial World.

A Pan-American Financial Conference was held in Washington, D. C., May 24-29, 1915, under the auspices of the United States. In addition to the United States being officially represented at this Conference, there were representatives present from the following 18 West Indian, Central and South American Republics; Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Cuba, Ecuador, Guatemala, Honduras, Nicaragua, Panama, Paraguay, Peru, Salvador, San Domingo, Uruguay and Venezuela.

This conference took action looking toward uniformity of legislation throughout the commercial world in regard to, among

other things, "bills of exchange, commercial paper and bills of lading." It recommended the creation of an international high commission to bring about such uniformity on the seven subjects embraced in a report of a sub-committee of a general committee on uniformity of laws, a copy of which report is hereto attached and marked "Exhibit C" and made part hereof.

Your committee recommends that the American Bar Association indorse this movement looking to the bringing about of uniformity of commercial laws throughout the commercial world.

VI. Summary of Recommendations.

In conclusion, your committee summarizes its recommendations as follows:

(1) That the American Bar Association pass a resolution renewing its adherence to the National Bankruptcy Act and authorizing your Committee on Commercial Law to oppose any measures that may be introduced in the Sixty-fourth Congress to repeal the same;

(2) That the American Bar Association pass a resolution in substance as follows:

(a) To authorize the executive committee of the American Bar Association, in its discretion, to appropriate a sufficient sum of money to enable the Committee on Commercial Law to employ a draftsman to prepare a tentative draft of a bill as hereinafter described;

(b) That if the executive committee shall appropriate said money, said Committee on Commercial Law shall be authorized to employ a draftsman to prepare a tentative draft of a bill codifying the law covering the reciprocal rights, duties and obligations of common carriers and shippers in interstate and foreign commerce.

(c) That if said Committee on Commercial Law shall employ such draftsman, said tentative draft of said bill shall be prepared under the supervision and direction of and subject to the revision of said committee; and

(d) That when said tentative draft of said bill shall have been revised by said committee, said committee shall submit same at some future meeting of the American Bar Association for its consideration and action;

(3) That the American Bar Association adopt a resolution indorsing "A Bill Relating to Bills of Lading in Interstate and Foreign Commerce" appended to this report as "Exhibit B"; and

(4) That the American Bar Association pass a resolution indorsing the foregoing movement looking to the bringing about of uniformity of commercial laws throughout the commercial world.

Respectfully submitted,

FRANCIS B. JAMES, *Chairman,*
ERNEST T. FLORANCE,
J. A. C. KENNEDY,
FRANK GOSNELL,
FITZ-HENRY SMITH, JR.,
Committee on Commercial Law,
American Bar Association.

June 11, 1915.

EXHIBIT A.

No. 49 (Ex parte).

† IN RE THE CUMMINS AMENDMENT.

[33 I. C. C. R. 682.]

Submitted April 20, 1915. Decided May 7, 1915.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

For many years, if not, indeed, from the origin of railroad transportation in this country, common carriers by railroad have sought, by provisions in shipping contracts, bills of lading, tariff publications, etc., to limit their common-law liability, not only as insurers against loss or damage to property received by them for transportation, but also as tort-feasors for loss or damage caused by their negligence. One method was by a so-called release, executed by shipper and carrier, and intended to be effective whether the loss or damage was due to negligence of the carrier or to other causes. The courts in different jurisdictions

† 33 I. C. C. R. 682.

have differed as to the validity of such limitations and they have been the subject of legislation in some of the states.

By adoption of the "Carmack amendment," so called, to the act to regulate commerce, approved June 29, 1906, the Congress provided that a common carrier receiving property for transportation from a point in one state to a point in another state should issue a receipt or bill of lading therefor and be liable to the lawful holder thereof for any loss, damage or injury to such property caused by it or by any common carrier to which such property might be delivered, or over whose lines such property might pass, and declared that no contract, receipt, rule or regulation should exempt such common carrier from the liability thereby imposed. It was provided that nothing in that amendment should deprive any holder of such receipt or bill of lading of any remedy or right of action which he had at that time under existing law.

Since that time, beginning in 1913, with Adams Express Co. *vs.* Croninger, 226 U. S., 491, the Supreme Court of the United States has decided in a number of cases, all of which followed Hart *vs.* P. R. R., 112 U. S., 331, that where the shipper has his choice of two rates, the higher carrying unlimited carrier's liability, and in "a fair, just and reasonable agreement" declares or agrees that the value of his shipment is a certain sum and thereby secures a reduced transportation rate, he is bound by that declaration or agreement, estopped * from claiming or recovering more than that value in case of loss of or damage to the property, and conclusively presumed to have known the governing tariff.

On March 4, 1915, the following act, amendatory of the act to regulate commerce, and hereinafter called the Cummins amendment, was approved:

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That so much of section seven of an Act entitled 'An Act to amend an Act entitled "An Act to regulate commerce," approved February 4, 1887, and all Acts amendatory thereof, and to enlarge the powers of the Interstate Commerce Commission,' approved June 29, 1906, as reads as follows, to wit:

"'That any common carrier, railroad or transportation company receiving property for transportation from a point in one state to a point in another state shall issue a receipt or a bill of lading therefor, and shall be liable to the lawful holder thereof for

* 33 I. C. C. R. 684.

any loss, damage or injury to such property caused by it or by any common carrier, railroad or transportation company to which such property may be delivered, or over whose line or lines such property may pass, and no contract, receipt, rule or regulation shall exempt such common carrier, railroad or transportation company from the liability hereby imposed: *Provided,* That nothing in this section shall deprive any holder of such receipt or bill of lading of any remedy or right of action which he has under existing law,' be, and the same is hereby, amended so as to read as follows, to wit:

"'That any common carrier, railroad or transportation company subject to the provisions of this Act receiving property for transportation from a point in one state or territory or the District of Columbia to a point in another state, territory, District of Columbia, or from any point in the United States to a point in an adjacent foreign country shall issue a receipt or bill of lading therefor, and shall be liable to the lawful holder thereof for any loss, damage or injury to such property caused by it or by any common carrier, railroad or transportation company to which such property may be delivered or over whose line or lines such property may pass within the United States or within an adjacent foreign country when transported on a through bill of lading, and no contract, receipt, rule, regulation or other limitation of any character whatsoever, shall exempt such common carrier, railroad or transportation company from the liability hereby imposed; and any such common carrier, railroad or transportation company so receiving property for transportation from a point in one state, territory or the District of Columbia to a point in another state or territory, or from a point in a state or territory to a point in the District of Columbia, or from any point in the United States to a point in an adjacent foreign country, or for transportation wholly within a territory shall be liable to the lawful holder of said receipt or bill of lading or to any party entitled to recover thereon, whether such receipt or bill of lading has been issued or not, for the full actual loss, damage or injury to such property caused by it or by any such common carrier, railroad or transportation company to which such property may be delivered or over whose line or lines such property may pass within the United States or within an adjacent foreign country when transported on a through bill of lading, notwithstanding any limitation of liability or limitation of the amount of recovery or representation or † agreement as to value in any such receipt or bill of lading, or in any contract, rule, regulation or in any tariff filed with the Interstate Commerce Commission; and any such limitation, without respect to the manner or form in which it is

† 33 I. C. C. R. 685.

sought to be made, is hereby declared to be unlawful and void: *Provided, however,* That if the goods are hidden from view by wrapping, boxing or other means, and the carrier is not notified as to the character of the goods, the carrier may require the shipper to specifically state in writing the value of the goods, and the carrier shall not be liable beyond the amount so specifically stated, in which case the Interstate Commerce Commission may establish and maintain rates for transportation, dependent upon the value of the property shipped as specifically stated in writing by the shipper. Such rates shall be published as are other rate schedules: *Provided further,* That nothing in this section shall deprive any holder of such receipt or bill of lading of any remedy or right of action which he has under the existing law: *Provided further,* That it shall be unlawful for any such common carrier to provide by rule, contract, regulation or otherwise a shorter period for giving notice of claims than ninety days and for the filing of claims for a shorter period than four months, and for the institution of suits than two years: *Provided, however,* That if the loss, damage or injury complained of was due to delay or damage while being loaded or unloaded, or damaged in transit by carelessness or negligence, then no notice of claim nor filing of claim shall be required as a condition precedent to recovery.'

"SEC. 2. That this Act shall take effect and be in force from ninety days after its passage."

Many widely varying or diametrically opposed ideas have been expressed as to the effect of this amendment and as to what will be the lawful rates under present tariffs when it becomes effective on June 2, 1915. The commission has been urged to some expression in the premises. It has held a hearing on this subject, and the questions there discussed have been argued on briefs. From the best information it has been possible to obtain and the consideration it has been possible to give this matter within the limited time available, the commission expresses tentatively the views hereinafter indicated.

The greater part of the freight transported moves under a bill of lading, which constitutes a receipt for the property and a contract for its carriage. Efforts have been made from time to time to secure the adoption and use by all carriers of a uniform bill of lading, but no such effort has been entirely successful. Several years ago protracted effort of that kind, assisted in so far as seemed appropriate by the commission, culminated in substantial agreement among the representatives of the shippers and the representatives of the carriers, excepting those in the southern

classification territory, as to the terms and conditions of what was then styled and has since been known as the uniform bill of lading. The commission gave it tentative approval and recommended its use, and since that time it has been in use except in the southern territory mentioned, where a some * what different bill of lading, commonly called the standard bill of lading, has been and is in use.

The official classification, which, speaking generally, applies in the territory east of the Mississippi River and north of the Ohio and Potomac rivers, contains a rule that, except as otherwise provided, when property is transported subject to the provisions of that classification the acceptance and use of the uniform bill of lading, export bill of lading, uniform live-stock contract, and certain contracts with men in charge of shipments, respectively, are required. The uniform bill of lading and the other bills of lading or contracts are set out in full in the classification.

Another rule is that in order that the consignor may have the option of shipping subject to the terms and conditions of the uniform bill of lading, or under the liability imposed upon common carriers by the common law and the federal and state statutes applicable thereto, different rates and different forms of bills of lading are provided, to be used at the election of the shipper. Under this rule, unless it is otherwise provided in the classification, property will be carried at the lower rates specified if shipped subject to all the terms and conditions of the uniform bill of lading. Property carried not subject to all the terms and conditions of the uniform bill of lading is to be carried at the carrier's liability, limited only as provided by common law and by the laws of the United States and of the several states in so far as they apply, but subject to the terms and conditions of the uniform bill of lading in so far as they are not inconsistent with such common carrier's liability, and in such instances a rate 10 per cent higher, subject to a minimum increase of 1 per cent per 100 pounds, will be charged. It is provided that if consignor elects not to accept all the terms and conditions of the uniform bill of lading he shall so notify the agent of the carrier at the time his property is delivered for shipment, and if he does not give such notice it will be understood that he desires the property

* 33 I. C. C. R. 686.

carried subject to the terms and conditions of the uniform bill of lading in order to secure the lower rate or, as it is termed in the classification, "the reduced rate." If the shipper notifies the agent of the initial carrier that he elects not to accept all the terms and conditions of the uniform bill of lading, the agent must print, write or stamp upon the bill of lading a provision that in consideration of the higher rate charged the property will be carried at the carrier's liability, limited only as provided by law, but subject to the terms and conditions of the uniform bill of lading in so far as they are not inconsistent with such common carrier's liability.

The western classification, which, speaking generally, applies in all of the territory west of the Mississippi River and Lake Michigan, † contains a rule that, except as otherwise provided therein, when property is transported subject to the provisions of the western classification the acceptance and use of the uniform bill of lading is required. It also contains additional provisions substantially like those cited from the official classification. All of the terms of the uniform bill of lading are printed in the classification, but the live-stock contract form does not so appear. The live-stock ratings are stated to be based upon values declared by shippers, not exceeding certain stated values "under contract."

The southern classification, which, speaking in general, applies in the territory east of the Mississippi and south of the Ohio and Potomac rivers, contains a rule that the reduced rates specified in the classification will apply only on property shipped subject to the conditions of the carrier's bill of lading, and that property carried not subject to the conditions of the carrier's bill of lading will be at the carrier's liability, limited only as provided by common law and by the laws of the United States and of the several states in so far as they apply. It provides that property thus carried will be charged 10 per cent higher, subject to a minimum increase of 1 cent per 100 pounds, than if shipped subject to the conditions of the carrier's bill of lading. The classification does not contain the terms of the carrier's bill of lading, and, one or two individual exceptions, the terms thereof are not filed with the commission as a tariff publication or rate schedule. The classification provides that the rates on live stock will apply when

† 33 I. C. C. R. 687.

the declared value does not exceed certain values therein stated and that for each increase of 100 per cent or fraction thereof in declared value there shall be an increase of 20 per cent in the rate. The classification does not contain any requirement that the live-stock contract must be used, but it does provide that agents must not issue more than one live-stock contract on any one shipment. Some of the tariffs of the individual carriers in this territory contain released rates applicable to shipments of live stock which are conditioned upon certain declared valuations and upon shipments being made under the live-stock contract, and such tariffs provide that higher rates will apply when shipments are not so made. The terms of the live-stock contract are not incorporated in the tariffs and, with one or two individual exceptions, they are not filed with the commission as a tariff publication.

It is perfectly plain that the purpose of this law is, except as otherwise provided therein, to invalidate all limitations of carrier's liability for loss, damage or injury to property transported caused by the initial carrier or by another carrier to which it may be delivered or which may participate in transporting it. The law does not specifically say that attempts so to limit the carrier's liability shall * not be resorted to, but it declares them to be invalid and unlawful wherever found and in whatever guise they may appear. Obviously, therefore, neither the bills of lading or other contracts for carriage, or classifications or rate schedules of the carriers, should contain any provisions which are so declared to be unlawful and void.

Some of the carriers insist that if no changes are made in their classifications and other tariff publications the lower rates, which are conditioned upon the use of the bills of lading now in use, will be automatically canceled and the higher rates, based upon the carrier's liability, will be the only lawful rates from and after the date upon which the law in question becomes effective. Some of the shippers insist that if no changes are made in the classifications or tariff publications, the provisions for limitation of carrier's liability will, when the new law becomes effective, be unlawful and void, and the carriers will thereupon have two sets of rates, both applicable under like

* 33 I. C. C. R. 688.

conditions, and that of the two shippers will be entitled to the lower.

The official classification roads have announced the purpose of making certain changes in the terms of their bills of lading, other contracts of carriage, and classification and rate schedules, in the light of the provisions of the new law. They say that whether or not they will continue to maintain rates based upon the value of the property is a matter for further consideration by their traffic officers. They express the opinion that certain of these changes will impose upon them liabilities not heretofore borne and consequent loss of revenue, and reserve the right to assert at the proper time a claim for some increase in rates on account thereof.

The southern lines announced their purpose of making certain changes in their contracts, classification and rate schedules which would exempt certain heavy commodities moving in large quantities and said to constitute about 70 per cent of their traffic from any immediate increases in rates on account of the amended law, and to incorporate in the classification a provision that as to the remainder of the traffic the rates contained in schedules governed by the classification would be increased 5 per cent upon the date when the new law becomes effective. That method of changing rates would be in direct opposition to the commission's regulations governing the construction of tariffs, which are by the act given full force of law. The southern lines urge that the new law will produce conditions which furnish substantial reasons for allowing them additional revenue, and that it is physically impossible, except by the method which they propose, to issue any tariff publications prior to June 2 which will secure that additional revenue. They say that the tariff regulations are prescribed by the commission and that it is within † its power to modify them at any time, and therefore the question of whether or not the carriers should be permitted to make effective the proposed plan is wholly within the commission's discretion to determine. They argue that if nothing is done the 10 per cent higher rates will automatically become effective, which they do not desire, and that the course proposed by them is the only alternative to the injustice of their being compelled to sustain the burdens

† 33 I. C. C. R. 689.

imposed by the new legislation without means for recouping the losses which they will suffer.

The commission has made no investigation upon which a judgment as to the cost of and proper compensation for additional risk could be based. The commission has no right to assume that it would be 5 per cent of the rates upon 30 per cent of the carriers' traffic or that it would be any given per cent upon all of the traffic. Obviously there can be no propriety in attaching to one commodity unreasonable rates for the purpose of compensating a carrier for a risk attaching to it in the transportation of another commodity, and it is admitted that the carriers cannot make any accurate statement in advance as to the added cost, if any, of the increased liability.

With regard to rates on shipments of live stock, the southern carriers announced at the hearing their purpose to provide that the present rates would apply on shipments declared to be of value not exceeding that now stated as limitation of the carrier's liability, and to increase the rates 20 per cent for each 100 per cent increase in the declared value of the live stock. By letter submitted since the hearing they announce the purpose to provide for an increase of 5 per cent in the rate for each increase of 100 per cent, or fraction thereof, in the declared value.

By a still later letter the southern classification roads advise that, in view of the numerous and irreconcilable complications which have developed, and in order to remove all doubt as to the continuance of existing rates after the amendment to the law becomes effective, they have decided to supersede their present classification rule by one which will recite that the rates governed by the classification will apply only on property shipped subject to the conditions of the carrier's bill of lading in use on and after the effective date of the amended law, and, except as otherwise provided in the classification, all interstate rates in effect on June 2, 1915, will continue in force, disregarding provisions in tariffs, classifications and exception sheets which limit the liability of carriers, and to continue a provision that property carried not subject to the terms and conditions of the carriers' bill of lading will be at carriers' liability, limited only by the common law and the laws of the United States and of the several states in so far as they may apply, and property so carried will be subject to rates 10 per cent higher than those shown in the tariffs.

* The western classification roads, in the main, take a position substantially like that taken by the official classification roads. Their representatives expressed to the committees of Congress the view that the enactment of the amendment in question would, by striking from the uniform bill of lading vital provisions, automatically throw the roads back upon their common-law liability and the increased rates. They admit that a 10 per cent increase in rates cannot be justified. They think that the increased liability will justify some increase in rates, but emphatically disclaim any disposition to take advantage of a technical opportunity to mulct the shipping public. They are of opinion that they still have the right to provide rates upon live stock dependent upon the declared value of the stock, and that a shipper who misstates the true value of his shipment is guilty of violation of section 10 of the act, just as he would be if he misstated the commodity shipped. They suggest that their present rule, which provides in general for an increase of 10 per cent in the rate for each 100 per cent of increase in the declared valuation, is probably too high; that an increase of 5 per cent in the rate for each 100 per cent increase in the value, or of 3 per cent in the rate for each increase of 50 per cent in the value, would be a more equitable rule, and that this question is involved in a case soon to be submitted to the commission. They, like the eastern roads, have numerous commodity rates based upon valuation, and they think they may lawfully continue that practice. They have, however, not had opportunity since this bill was enacted to formulate in detail the changes which they think necessary and proper.

From the best information that can be gathered from testimony that has been submitted in various cases, it appears that prior to 1913 the limited liability provisions contained in the shipping contracts, classifications and rate schedules were very generally disregarded in the settlement of loss and damage claims, especially in the western classification territory. It seems, therefore, that to a very large extent at least, despite the limitations of liability stated in the contracts and schedules, full value was quite generally recognized in the settlement of claims. After the Supreme Court decided the Croninger case, *supra,* in 1913, the

* 33 I. C. C. R. 690.

provisions of the contracts and rate schedules in this and other particulars were recognized as lawfully binding upon carriers and shippers alike, and the policy followed was correspondingly changed. It is pointed out that prior to 1906 many of these limitations of liability were not contained in the shipping contracts and rate schedules; that in 1906 they were incorporated therein, but were largely ignored until 1913; that in 1913 the policy was generally adopted of endeavoring to enforce the limited liability provisions, and that neither in 1906 nor in 1913 † was any change in the rates undertaken because of the limited liability. It is argued that inasmuch as no reduction in rates was made when the limited liability provisions were established, or when they were sustained as lawful by the Supreme Court of the United States, there is no justification for an increase in rates now that the liability conditions are restored to substantially what they were prior to 1906. Limitations of liability have been incorporated in live-stock shipment contracts for many years, but, as has been said, it appears that at least in the territory where there is the greatest movement of live stock those limitations were generally disregarded in settlement of claims.

The so-called uniform bill of lading, which has been in use in official and western classification territories, contains and has contained, a provision that claims for loss or damage must be presented to the carrier within four months, but until the Croninger case, *supra,* was decided by the Supreme Court no effort was made by the carriers generally to enforce or to observe that provision. After the Croninger case was decided the carriers adopted an entirely different course and took the position that this provision was in the bill of lading, the terms of the bill of lading were in the rate schedules, and therefore it was unlawful to depart from that requirement. This created a general controversy, and the sudden change from ignoring a rule to literally enforcing it necessarily created multitudes of unjust discriminations. The question was presented to and considered by the commission, and as the fair and only means of composing the situation and avoiding endless controversy and litigation, the commission issued its report, In the Matter of Bills of Lading, 29 I. C. C. 417.

† 33 I. C. C. R. 691.

The Cummins amendment makes it unlawful for the carrier to fix a period for giving notice of claims shorter than 90 days, for the filing of claims shorter than four months, and for the institution of suits shorter than two years. The law does not indicate the time or date from which these several periods of time shall be computed; that is, whether from the date of delivery by the carrier of the damaged property, or in case of loss, after a reasonable time for delivery has elapsed, from the date shown on the bill of lading, or from the occurrence of the loss or of the damage. It seems clear that these provisions are, in common with the other matters governed by the amendment, confined to instances of loss, damage or injury caused by the carriers. It will be necessary for the carriers to determine what periods of time they will fix for the giving notice of claims, the filing of claims, and the institution of suits. The dates or times from which such periods shall run should also be fixed in the rules. In the interest of thorough understandings and to avoid controversies it is * very desirable that these rules be uniform for all the carriers of the country.

It is to be remembered that the Cummins amendment is not a separate statute, but is an amendment to the act. It must, therefore, be construed as a part of, and in connection with other portions of, the act, and in such a way as to give effect to the whole statute. There does not seem to be any indication of legislative intent to change any provision of the act other than that part known as the Carmack amendment. The new amendment should, if possible, be so construed as to give full force to its clear purpose, without impairing the effect of any other provision of the act.

The more important points which seem to be surrounded with the most doubt and upon which opinions so far expressed most sharply conflict, are:

1. If no changes are made in the existing shipping contracts and rate schedules, will the higher rates provided therein automatically become lawfully applicable upon the date upon which the amendment takes effect?

As we have seen, the Carmack amendment, adopted in 1906, provided that no contract, receipt, rule or regulation should exempt the carrier from the liability thereby imposed. As has

* 33 I. C. C. R. 692.

been said, no effort was made to change rates because of that amendment to the act. The classifications or rate schedules provide that unless the terms of certain bills of lading are accepted higher rates will apply. The terms of the bill of lading could be modified or changed to any extent without automatically changing any rate. Prior to 1913 many of the limitations contained in bills of lading or other shipping contracts were treated as if they did not exist, and it was never suggested that the validity or invalidity of any such provision affected the rate.

It is contrary to all canons of construction to hold that an act of Congress produces a result not intended by Congress unless the express language of the act compels such a construction. There is nothing in the expressed terms of this act or in the history of this legislation that shows any intent or purpose on the part of Congress to affect in any degree the existing rates charged by carriers for transporting property. The legislation is aimed at specified contracts and declares them to be unlawful. The lawful rates on file at this time, therefore, are the rates providing for the limited liability. The Cummins amendment, by making contracts limiting liability for loss caused by the carriers unlawful, does not destroy these rates, but they remain in effect and are lawfully applicable, for the 10 per cent increased rates are merely additional and cannot stand in and of themselves.

†Applying correct rules of interpretation, the Cummins amendment does not automatically bring into effect the increased rates named in the classifications and tariff publications as applicable to shipments which are not made subject to the terms of the uniform or carrier's bill of lading.

2. May the carriers lawfully provide in their tariffs and rate schedules that their liability shall be for the full value of the property at the time and place of shipment?

It is argued that such a provision would be neither a limitation of the amount of recovery nor a representation or agreement as to value within the meaning of the new law. It is urged that this rule would relieve the question of the amount of liability from uncertainty, would afford a reasonable and uniform method of determining the measure of recovery, save endless litigation

† 33 I. C. C. R. 693.

with its attendant labor and expense, and avoid unjust discriminations.

The Cummins amendment clearly places upon the carriers liability for the full actual loss, damage or injury to the property transported which is caused by them, and it makes unlawful any limitation of that liability, or of the amount of recovery thereunder, in any receipt, bill of lading, contract, rule, regulation or tariff filed with this commission, without respect to the manner or form in which such limitation is sought to be made. The loss or damage must, apparently, be either as of the time and place of shipment, time and place of loss or damage, or time and place of destination. Where rates are lawfully dependent upon declared values, the property and the rates are classified according to the character of the property, of which the value of the property may constitute an element, and such classification is necessarily as of the time and place of shipment. It is therefore believed that the liability of the carrier may be limited to the full value of the property so classified and established as of the time and place of shipment.

3. Does the amendment to the act apply to export and import shipments to and from foreign countries not adjacent to the United States?

This must be answered in the negative, in view of the fact that, while specifically stating that its terms shall apply to property received for transportation from certain points to certain other points, it makes no reference to shipments from a point in the United States to a point in a nonadjacent foreign country, or from a nonadjacent foreign country to a point in the United States.

4. In the proviso, "that if the goods are hidden from view by wrapping, boxing or other means, and the carrier is not notified as to the character of the goods," what is the proper interpretation to be placed upon the words "and the carrier is not notified as to the character of the goods"?

* Some argue that the word "character" means nothing more than a statement of the ordinary name by which the commodity is known. On the other hand, it is urged that knowledge as to what the commodity is is necessary in order to apply to it any

* 33 I. C. C. R. 694.

transportation rate, and that therefore the word "character" properly means more than the mere name of the commodity. It has been suggested that the real and proper meaning would be indicated by recasting the language as follows:

"*Provided, however,* That if a commodity in the course of transportation is hidden from view by wrapping, boxing or other means, so that the carrier cannot know its character, that is to say, its grade, quality and condition, it may, with the approval of the commission, publish and maintain rates based on value and require the shipper to state in writing the value of any shipment made, and beyond the value so stated the carrier shall not be liable."

It has also been suggested that in view of the fact that the articles dealt with in this proviso are to be distinguished on the basis of value, the value becomes a peculiar quality of the property and the word "character" should be construed as including value, and that when the shipper notifies the carrier of the character of the goods the notice is incomplete unless the value is stated as a necessary element in pointing out the character of the goods.

Another suggestion is that when common experience or knowledge does not clearly establish the nature of the goods, or the view is hidden by boxing, wrapping or other means, and the carrier is not notified as to the true character of the goods, it may exercise the right to require the shipper to state in writing the value of the property.

The right of the carrier to initiate its rates and to consider value of the property tendered for transportation as an element in determining the classification thereof or the rate applicable thereto has not been denied by the act or withdrawn by this amendment. The right in certain instances to make varying rates upon a given article or commodity dependent upon its true value being recognized, and it being impossible for the carrier's agent to know the true value of the shipment unless it is declared by the shipper, and in view of the fact that the ordinary name of the commodity is essential to the application of any transportation rate whatsoever, it seems that the word "character" as used in this proviso must include the true and actual value as stated by the shipper.

The word "character" as here used clearly relates primarily to value, or to those qualities affecting value, and when the entire proviso is considered the meaning seems to be that if the qualities affecting value of the goods are hidden from the carrier's view, or are not known to the carrier, the proviso applies. It is a well-settled rule † of statutory construction that the word "and" may be read as "or" in deference to the meaning of the context.

If the word "and" in the proviso is read as "or," the meaning is reasonably clear, whereas if the letter of the statute is adhered to the meaning is doubtful and difficult to determine. In those instances in which the carrier desires to limit its liability to the value of the property as specifically stated in writing by the shipper, the rate must be based upon the declared value and be so published; but the commission apparently must determine in advance of such publication that the commodity is one the value of which cannot be known to the carrier from ordinary sources or reasonable inspection, and to which rates based on declared value may be applied in connection with which the carrier's liability is limited to the value so declared.

In determining that question the inquiry is whether or not the commodity is one the value of which is peculiarly within the knowledge of the shipper. If it has a definite market value, or its value depends upon facts of which the carrier has equal knowledge with the shipper, the "character" of the shipment is known to the carrier, and the proviso does not apply. The Congress did not affirmatively recognize any rates based upon declared value other than those authorized by this proviso. This, of course, does not mean that commodities may not be reasonably classified according to value and be subject to different rates applicable to different grades of the same commodity, which is a different matter from limiting the liability to the declared value.

When the goods are not hidden from view, and the carrier is advised as to their character, all contracts or agreements purporting to limit the liability of the carrier for loss or damage caused by it are made void. A carrier, after the Cummins amendment goes into effect, may not contract to limit its liability

† 33 I. C. C. R. 695.

for loss or damage caused by it to the property. There is, however, no inhibition as to the limitation of the liability of a carrier for losses not caused by it or a succeeding carrier to which the property may be delivered. The amendment has expressly reapplied the limitation of the prior act with respect to loss or damage caused by the carriers chargeable therewith. It follows, therefore, that the interpretation applied to the act before it was amended is equally applicable to the amendment in so far as the latter affects the right of a carrier to establish rates conditional upon the shipper's assumption of the entire risk of loss attributable to causes beyond the carrier's control. From this it follows that under the amendment a contract or a tariff may lawfully limit to a reasonable maximum the liability of a carrier for losses which it does not cause. It follows further that the rates provided by such tariff may be proportionate to the risk assumed.

* This provision of the statute as to goods concealed from view and of the character of which the carrier is not advised clearly prescribes the right of carriers under the direction or approval of the commission to provide for a graduation of rates in accordance with the declared value of the property transported. The liability provided by the rates so established by the commission is applicable no less to instances of loss or damage chargeable to the negligence of the carrier than to those occasioned by causes beyond the carrier's control. But the carriers may not contract to limit their liability for loss, damage or injury caused by them to property the character of which is manifested by the shipment itself or otherwise disclosed.

In this connection it has been suggested that the carrier might provide that in the event the shipper refused to declare the value the higher rates would apply. This suggestion cannot be approved. If the rate is lawfully conditioned upon the value as declared by the shipper, it is as much the shipper's duty to declare the true value of the shipment as it is his duty to declare the name of a commodity tendered for shipment as to which there are no different rates.

It is important to keep in mind that the carriers are not prohibited from making different rates dependent upon the value of different grades of a given commodity; that, except as covered

* 33 I. C. C. R. 696.

by the Cummins amendment, including approval of the rates by the commission, the carrier is subject to all of the liabilities imposed by that amendment; and that if, in any instance, the shipper declares the value to be less than the true value in order to get a lower rate than that to which he would otherwise be entitled, he violates, and is subject to the penalty prescribed in, section 10 of the act. The carrier would also be subject to the same penalty in such a case if, having knowledge that the value represented is not the true value, it nevertheless accepts the shipper's representation as to value for the purpose of applying the rate.

5. Do the terms of the Cummins amendment apply to the transportation of baggage?

This must apparently be answered in the affirmative. Transportation of baggage is a part of the contract for transportation of the passenger. The carriers have always limited their liability for loss or damage to baggage. The baggage check is the carrier's receipt for the baggage. The conditions attached to the carrier's liability are stated in the fare schedules and on passage tickets of contract form. In National Baggage Committee *vs.* A., T. & S. F. Ry. Co., 32 I. C. C. 152, the commission considered the carrier's rules relative to charges and liabilities in the transportation of baggage and prescribed certain reasonable regulations, including reasonable insurance † charges upon baggage declared to be of greater value than the maximum limit provided in the schedules and contract for carriage. All ordinary personal or sample baggage is hidden from view by boxing, wrapping or other means, and the amended law seems clearly to recognize the carrier's right to fix conditions and terms applicable to the transportation of baggage dependent upon the value as declared by the person offering the baggage for transportation.

The necessity for revision of the bills of lading, live-stock contracts, and other similar contracts of carriage, as well as of certain parts of the carriers' classifications and rate schedules, is manifest. Bills of lading and shipping contracts can and ought to be at once amended by eliminating obviously unlawful and invalid provisions. Such action will obviate for the immediate future

† 33 I. C. C. R. 697.

numerous controversies that otherwise would probably arise. Proper analysis should be made of the classifications and tariffs to bring them into harmony with the amended law.

Such changes in classifications and rate schedules cannot be made upon statutory notice and become effective contemporaneously with the new law. Permission is therefore hereby given to carriers to make effective on June 2, 1915, upon not less than three days' notice to the public and to the commission, given in the manner prescribed in the act and in the commission's regulations, amendments to the classifications and rate schedules which eliminate provisions or rules that are in conflict with the terms of the new law, provided no such amendment has the effect of increasing any rate or charge for services.

If, in a proper manner and a proper proceeding, it shall be made to appear that, with regard to any commodity or commodities, the existing rates do not afford the carriers proper compensation for the services they perform and the risk which is imposed upon them, it could hardly be denied that the rates on such commodities might properly be increased in a sufficient amount to properly compensate the carriers for their added risk and liability. Where rates are lawfully based upon declared values the difference in rates should be no more than fairly and reasonably represents the added insurance. It does not appear that this amendment to the act affords justification for any increase in rates on commodities in general. As has been said, the carrier may not lawfully impose unreasonable rates upon one commodity in order to compensate it for risk or liabilities incurred in connection with the transportation of another commodity, and it is not to be forgotten that the liabilities here considered are only those for loss, damage or injury to the property caused by a carrier or its agents or employees; in other words, the loss, damage or injury resulting from the neglects or omissions of a carrier or its agents.

* The commission has been conducting an investigation with regard to bills of lading, entitled In the Matter of Bills of Lading, Docket No. 4844. Further hearings in that proceeding may be necessary in the light of the Cummins amendment. In that connection matters that have been informally presented and urged in this informal proceeding may be presented in a formal way,

* 33 I. C. C. R. 698.

supported by testimony, and a determination can there be reached on questions as to which the commission now has no information upon which it could base a lawful order. What is attempted here is simply to indicate the impressions gained from the experience had in the past and from the suggestions informally presented by those who are vitally interested in the effect of the Cummins amendment and the course to be pursued for the immediate future in the light thereof. All of the questions herein discussed are, of course, subject to judicial interpretation, and the views indicated herein might be somewhat changed in the light of more complete information supported by competent evidence.

The classification, tariffs, receipt and other forms used by the express companies have been prescribed by order of the commission. The new law, of course, applies to them as well as to other carriers. They have presented suggested changes in their rules and forms which will be disposed of by a supplemental order in the Express case.

HALL, *Commissioner,* concurring:

I concur in this report, but do not agree with the construction placed upon the proviso in the Cummins amendment in so far as it extends the exception created by that proviso beyond the meaning of the words used in their usual sense.

EXHIBIT B.

A BILL

RELATING TO BILLS OF LADING IN INTERSTATE AND FOREIGN COMMERCE.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That bills of lading issued by any common carrier for the transportation of goods in any territory of the United States, or the District of Columbia, or from a place in a state to a place in a foreign country, or from a place in one state to a place in another state, or from a place in one state to a place in the same state through another state or foreign country, shall be governed by this Act.

SEC. 2. That a bill in which it is stated that the goods are consigned or destined to a specified person is a straight bill.

SEC. 3. That a bill in which it is stated that the goods are consigned or destined to the order of any person named in such bill is an order bill. Any provision in such a bill, or in any notice, contract, rule, regulation or tariff that it is nonnegotiable shall be null and void and shall not affect its negotiability within the meaning of this Act.

SEC. 4. That order bills issued in a state for the transportation of goods to any place in the United States on the Continent of North America, except Alaska and Panama, shall not be issued in parts or sets. If so issued, the carrier issuing them shall be liable for failure to deliver the goods described therein to anyone who purchases a part for value in good faith, even though the purchase be after the delivery of the goods by the carrier to a holder of one of the other parts: *Provided, however,* That nothing contained in this section shall be interpreted or construed to forbid the issuing of order bills in parts or sets for such transportation of goods to Alaska, Panama, Porto Rico, the Philippines, Hawaii, or foreign countries, or to impose the liabilities set forth in this section for so doing.

SEC. 5. That when more than one order bill is issued in a state for the same goods to be transported to any place in the United States on the Continent of North America, except Alaska and Panama, the word "duplicate," or some other word or words indicating that the document is not an original bill, shall be placed plainly upon the face of every such bill except the one first issued. A carrier shall be liable for the damage caused by his failure so to do to anyone who has purchased the bill for value in good faith as an original, even though the purchase be after the delivery of the goods by the carrier to the holder of the original bill: *Provided, however,* That nothing contained in this section shall in such case for such transportation of goods to Alaska, Panama, Porto Rico, the Philippines, Hawaii, or foreign countries be interpreted or construed so as to require the placing of the word "duplicate" thereon, or to impose the liabilities set forth in this section for failure so to do.

SEC. 6. That a straight bill shall have placed plainly upon its face by the carrier issuing it "nonnegotiable" or "not negotiable."

This section shall not apply, however, to memoranda or acknowledgments of an informal character.

SEC. 7. That the insertion in an order bill of the name of a person to be notified of the arrival of the goods shall not limit the negotiability of the bill or constitute notice to a purchaser thereof of any rights or equities of such person in the goods.

SEC. 8. That a carrier, in the absence of some lawful excuse, is bound to deliver goods upon a demand made either by the consignee named in the bill for the goods or, if the bill is an order bill, by the holder thereof, if such a demand is accompanied by—

(a) An offer in good faith to satisfy the carrier's lawful lien upon the goods;

(b) An offer in good faith to surrender, properly indorsed, the bill which was issued for the goods, if the bill is an order bill; and

(c) A readiness and willingness to sign, when the goods are delivered, an acknowledgment that they have been delivered, if such signature is requested by the carrier.

In case the carrier refuses or fails to deliver the goods, in compliance with a demand by the consignee or holder so accompanied, the burden shall be upon the carrier to establish the existence of a lawful excuse for such refusal or failure.

SEC. 9. That a carrier is justified, subject to the provisions of the three following sections, in delivering goods to one who is—

(a) A person lawfully entitled to the possession of the goods, or

(b) The consignee named in a straight bill for the goods, or

(c) A person in possession of an order bill for the goods, by the terms of which the goods are deliverable to his order; or which has been indorsed to him, or in blank by the consignee. or by the mediate or immediate indorsee of the consignee.

SEC. 10. That where a carrier delivers goods to one who is not lawfully entitled to the possession of them, the carrier shall be liable to anyone having a right of property or possession in the goods if he delivered the goods otherwise than as authorized by subdivisions (b) and (c) of the preceding section; and, though he delivered the goods as authorized by either of said subdivisions, he shall be so liable if prior to such delivery he—

(a) Had been requested, by or on behalf of a person having a right of property or possession in the goods, not to make such delivery, or

(b) Had information at the time of the delivery that it was to a person not lawfully entitled to the possession of the goods.

Such request or information, to be effective within the meaning of this section, must be given to an officer or agent of the carrier, the actual or apparent scope of whose duties includes action upon such a request or information, and must be given in time to enable the officer or agent to whom it is given, acting with reasonable diligence, to stop delivery of the goods.

SEC. 11. That except as provided in section 26, and except when compelled by legal process, if a carrier delivers goods for which an order bill had been issued, the negotiation of which would transfer the right to the possession of the goods, and fails to take up and cancel the bill, such carrier shall be liable for failure to deliver the goods to anyone who for value and in good faith purchases such bill, whether such purchaser acquired title to the bill before or after the delivery of the goods by the carrier and notwithstanding delivery was made to the person entitled thereto.

SEC. 12. That except as provided in section 26, and except when compelled by legal process, if a carrier delivers part of the goods for which an order bill had been issued and fails either—

(a) To take up and cancel the bill, or

(b) To place plainly upon it a statement that a portion of the goods has been delivered with a description which may be in general terms either of the goods or packages that have been so delivered or of the goods or packages which still remain in the carrier's possession, he shall be liable for failure to deliver all the goods specified in the bill to anyone who for value and in good faith purchases it whether such purchaser acquired title to it before or after the delivery of any portion of the goods by the carrier, and notwithstanding such delivery was made to the person entitled thereto.

SEC. 13. That any alteration, addition or erasure in a bill after its issue without authority from the carrier issuing the same, either in writing or noted on the bill, shall be void, what-

ever be the nature and purpose of the change, and the bill shall be enforceable according to its original tenor.

SEC. 14. That where an order bill has been lost, stolen or destroyed, a court of competent jurisdiction may order the delivery of the goods upon satisfactory proof of such loss or destruction; and upon the giving of a bond, with sufficient surety, to be approved by the court, to protect the carrier or any person injured by such delivery from any liability or loss incurred by reason of the original bill remaining outstanding, the court may also in its discretion order the payment of the carrier's reasonable costs and counsel fees.

The delivery of the goods under an order of the court, as provided in this section, shall not relieve the carrier from liability to a person to whom the order bill has been or shall be negotiated for the value without notice of the proceedings or of the delivery of the goods.

SEC. 15. That a bill, upon the face of which the word "duplicate" or some other word or words indicating that the document is not an original bill is placed, plainly shall impose upon the carrier issuing the same the liability of one who represents and warrants that such bill is an accurate copy of an original bill properly issued, but no other liability.

SEC. 16. That no title to goods or right to their possession asserted by a carrier for his own benefit shall excuse him from liability for refusing to deliver the goods according to the terms of a bill issued for them, unless such title or right is derived directly or indirectly from a transfer made by the consignor or consignee after the shipment, or from the carrier's lien.

SEC. 17. That if more than one person claim the title or possession of goods, the carrier may require all known claimants to interplead, either as a defense to an action brought against him for nondelivery of the goods or as an original suit, whichever is appropriate.

SEC. 18. That if some one other than the consignee or the person in possession of the bill has a claim to the title or possession of the goods, and the carrier has information of such claim, the carrier shall be excused from liability for refusing to deliver the goods, either to the consignee or person in possession of the bill or to the adverse claimant, until the carrier has had a rea-

sonable time to ascertain the validity of the adverse claim or to bring legal proceedings to compel all claimants to interplead.

SEC. 19. That except as provided in the two preceding sections and in section 9 no right or title of a third person, unless enforced by legal process, shall be a defense to an action brought by the consignee of a straight bill or by the holder of an order bill against the carrier for failure to deliver the goods on demand.

SEC. 20. That when goods are loaded by a carrier such carrier shall count the packages of goods, if package freight, and ascertain the kind and quantity if bulk freight, and such carrier shall not, in such cases, insert in the bill of lading or in any notice, receipt, contract, rule, regulation or tariff "Shipper's weight, load and count," or other words of like purport, indicating that the goods were loaded by the shipper and the description of them made by him. If so inserted, contrary to the provisions of this section, said words shall be treated as null and void and as if not inserted therein.

SEC. 21. That when goods are loaded by a shipper, at a place where the carrier maintains an agency, such carrier shall, on written request of such shipper, and when given a reasonable opportunity by the shipper so to do, count the packages of goods if package freight and ascertain the kind and quantity of bulk freight, within a reasonable time after such written request, and such carrier shall not, in such cases, insert in the bill of lading or in any notice, receipt, contract, rule, regulation or tariff "Shipper's weight, load and count," or other words of like purport indicating that the goods were loaded by the shipper and the description of them made by him. If so inserted, contrary to the provisions of this section, said words shall be treated as null and void and as if not inserted therein.

SEC. 22. That if a bill of lading has been issued by a carrier or on his behalf by an agent or employee the scope of whose actual or apparent authority includes the issuing of bills of lading, the carrier shall be liable to (a) the consignee named in a straight bill or (b) the holder of an order bill, who has given value in good faith, relying upon the description therein of the goods, for damages caused by the nonreceipt by the carrier of all or part of the goods or their failure to correspond with the description thereof in the bill at the time of its issue.

SEC. 23. That if goods are delivered to a carrier by the owner or by a person whose act in conveying the title to them to a purchaser for value in good faith would bind the owner, and an order bill is issued for them, they cannot thereafter, while in the possession of the carrier, be attached by garnishment or otherwise or be levied upon under an execution unless the bill be first surrendered to the carrier or its negotiation enjoined. The carrier shall in no such case be compelled to deliver the actual possession of the goods until the bill is surrendered to him or impounded by the court.

SEC. 24. That a creditor whose debtor is the owner of an order bill shall be entitled to such aid from courts of appropriate jurisdiction by injunction and otherwise in attaching such bill or in satisfying the claim by means thereof as is allowed at law or in equity in regard to property which cannot readily be attached or levied upon by ordinary legal process.

SEC. 25. That if an order bill is issued the carrier shall have no lien on the goods therein mentioned except for charges on those goods for freight, storage, demurrage and terminal charges, and expenses necessary for the preservation of the goods or incident to their transportation subsequent to the date of the bill, unless the bill expressly enumerates other charges for which a lien is claimed. In such case there shall also be a lien for the charges enumerated so far as they are allowed by law and the contract between the consignor and the carrier.

SEC. 26. That after goods have been lawfully sold to satisfy a carrier's lien, or because they have not been claimed, or because they are perishable or hazardous, the carrier shall not thereafter be liable for failure to deliver the goods themselves to the consignee or owner of the goods, or to a holder of the bill given for the goods when they were shipped, even if such bill be an order bill.

SEC. 27. That an order bill may be negotiated by delivery where, by the terms of the bill, the carrier undertakes to deliver the goods to the order of a specified person, and such person or a subsequent indorsee of the bill has indorsed it in blank.

SEC. 28. That an order bill may be negotiated by the indorsement of the person to whose order the goods are deliverable by the tenor of the bill. Such indorsement may be in blank or

to a specified person. If indorsed to a specified person, it may be negotiated again by the indorsement of such person in blank or to another specified person. Subsequent negotiation may be made in like manner.

SEC. 29. That a bill may be transferred by the holder by delivery, accompanied with an agreement, express or implied, to transfer the title to the bill or to the goods represented thereby. A straight bill cannot be negotiated, and the indorsement of such a bill gives the transferee no additional right.

SEC. 30. That an order bill may be negotiated by any person in possession of the same, however such possession may have been acquired, if by the terms of the bill the carrier undertakes to deliver the goods to the order of such person, or if at the time of negotiation the bill is in such form that it may be negotiated by delivery.

SEC. 31. That a person to whom an order bill has been duly negotiated acquires thereby—

(a) Such title to the goods as the person negotiating the bill to him had or had ability to convey to a purchaser in good faith for value, and also such title to the goods as the consignee and consignor had or had power to convey to a purchaser in good faith for value; and

(b) The direct obligation of the carrier to hold possession of the goods for him according to the terms of the bill as fully as if the carrier had contracted directly with him.

SEC. 32. That a person to whom a bill has been transferred, but not negotiated, acquires thereby as against the transferor the title to the goods, subject to the terms of any agreement with the transferor. If the bill is a straight bill such person also acquires the right to notify the carrier of the transfer to him of such bill and thereby to become the direct obligee of whatever obligations the carrier owed to the transferor of the bill immediately before the notification.

Prior to the notification of the carrier by the transferor or transferee of a straight bill the title of the transferee to the goods and the right to acquire the obligation of the carrier may be defeated by garnishment or by attachment or execution upon the goods by a creditor of the transferor, or by a notification to

the carrier by the transferor or a subsequent purchaser from the transferor of a subsequent sale of the goods by the transferor.

A carrier has not received notification within the meaning of this section unless an officer or agent of the carrier, the actual or apparent scope of whose duties includes action upon such a notification, has been notified; and no notification shall be effective until the officer or agent to whom it is given has had time, with the exercise of reasonable diligence, to communicate with the agent or agents having actual possession or control of the goods.

SEC. 33. That where an order bill is transferred for value by delivery, and the indorsement of the transferor is essential for negotiation, the transferee acquires a right against the transferor to compel him to indorse the bill, unless a contrary intention appears. The negotiation shall take effect as of the time when the indorsement is actually made. This obligation may be specifically enforced.

SEC. 34. That a person who negotiates or transfers for value a bill by indorsement or delivery, unless a contrary intention appears, warrants—

(a) That the bill is genuine;

(b) That he has a legal right to transfer it;

(c) That he has knowledge of no fact which would impair the validity or worth of the bill;

(d) That he has a right to transfer the title to the goods, and that the goods are merchantable or fit for a particular purpose whenever such warranties would have been implied if the contract of the parties had been to transfer without a bill the goods represented thereby.

SEC. 35. That the indorsement of a bill shall not make the indorser liable for any failure on the part of the carrier or previous indorsers of the bill to fulfill their respective obligations.

SEC. 36. That a mortgagee or pledgee or other holder of a bill for security who in good faith demands or receives payment of the debt for which such bill is security, whether from a party to a draft drawn for such debt or from any other person, shall not be deemed by so doing to represent or warrant the genuineness of such bill or the quantity or quality of the goods therein described.

SEC. 37. That the validity of the negotiation of a bill is not impaired by the fact that such negotiation was a breach of duty on the part of the person making the negotiation, or by the fact that the owner of the bill was deprived of the possession of the same by fraud, accident, mistake, duress, loss, theft or conversion, if the person to whom the bill was negotiated, or a person to whom the bill was subsequently negotiated, gave value therefor in good faith, without notice of the breach of duty, or fraud, accident, mistake, duress, loss, theft or conversion.

SEC. 38. That where a person, having sold, mortgaged or pledged goods which are in a carrier's possession and for which an order bill has been issued, or having sold, mortgaged or pledged the order bill representing such goods, continues in possession of the order bill, the subsequent negotiation thereof by that person under any sale, pledge or other disposition thereof to any person receiving the same in good faith, for value and without notice of the previous sale, shall have the same effect as if the first purchaser of the goods or bill had expressly authorized the subsequent negotiation.

SEC. 39. That where an order bill has been issued for goods no seller's lien or right of stoppage in transitu shall defeat the rights of any purchaser for value in good faith to whom such bill has been negotiated, whether such negotiation be prior or subsequent to the notification to the carrier who issued such bill of the seller's claim to a lien or right of stoppage in transitu. Nor shall the carrier be obliged to deliver or justified in delivering the goods to an unpaid seller unless such bill is first surrendered for cancellation.

SEC. 40. That, except as provided in section 39, nothing in this Act shall limit the rights and remedies of a mortgagee or lien holder whose mortgage or lien on goods would be valid, apart from this Act, as against one who for value and in good faith purchased from the owner, immediately prior to the time of their delivery to the carrier, the goods which are subject to the mortgage or lien and obtained possession of them.

SEC. 41. That any person who, knowingly or with intent to defraud, falsely makes, alters, forges, counterfeits, prints or photographs any bill of lading, or with like intent utters or publishes as true and genuine any such falsely altered, forged,

counterfeited, falsely printed or photographed bill of lading, knowing it to be falsely altered, forged, counterfeited, falsely printed or photographed, or aids in making, altering, forging, counterfeiting, printing or photographing, or uttering or publishing the same, or issues or aids in issuing or procuring the issue of, or negotiates or transfers for value a bill which contains a false statement as to the receipt of the goods, or as to any other matter, or who, with intent to defraud, violates, or fails to comply with, or aids in any violation of, or failure to comply with any provision of this Act, shall be guilty of a misdemeanor, and, upon conviction, shall be punished for each offense by imprisonment not exceeding five years, or by a fine not exceeding $5,000, or both.

SEC. 42. That in any case not provided for in this Act the rules of law and equity, including the law merchant, shall govern.

SEC. 43. First. That in this Act, unless the context or subject matter otherwise requires—

"Action" includes counterclaim, set-off, and suit in equity.

"Bill" means bill of lading governed by this Act.

"Consignee" means the person named in the bill as the person to whom delivery of the goods is to be made.

"Consignor" means the person named in the bill as the person from whom the goods have been received for shipment.

"Goods" means merchandise or chattels in course of transportation or which have been or are about to be transported.

"Holder" of a bill means a person who has both actual possession of such bill and a right of property therein.

"Order" means an order by indorsement on the bill.

"Owner" does not include mortgagee or pledgee.

"Person" includes a corporation or partnership, or two or more persons having a joint or common interest.

To "purchase" includes to take as mortgagee and to take as pledgee.

"Purchaser" includes mortgagee and pledgee.

"State" includes any territory, district, insular possession or isthmian possession.

Second. A thing is done "in good faith" within the meaning of this Act when it is in fact done honestly, whether it be done negligently or not.

SEC. 44. That the provisions of this Act do not apply to bills made and delivered prior to the taking effect thereof.

SEC. 45. That the provisions and each part thereof and the sections and each part thereof of this Act are independent and severable, and the declaring of any provision or part thereof, or provisions or part thereof, or section or part thereof, or sections or part thereof, unconstitutional shall not impair or render unconstitutional any other provision or part thereof, or section or part thereof.

SEC. 46. That this Act shall take effect and be in force on and after the first day of January next after its passage.

EXHIBIT C.

REPORT OF THE SUB-COMMITTEE OF THE GENERAL COMMITTEE ON UNIFORMITY OF LAWS RELATING TO TRADE, COMMERCE AND INTERNATIONAL COURT, APPOINTED TO CONSIDER AND REPORT UPON (1) THE SUBJECTS TO BE DEALT WITH BY THE GENERAL COMMITTEE, AND (2) THE ORGANIZATION NECESSARY TO CARRY INTO EFFECT THE RESOLUTIONS OF THE CONFERENCE.

I. SUBJECTS.

The sub-committee has not taken into consideration the subject of transportation, which should, in its opinion, be kept separate and distinct and be dealt with independently.

The subjects which should, in the opinion of the sub-committee, be dealt with in the report of the committee to the Conference are:

1. The establishment of a gold standard of value.

2. Bills of exchange, commercial paper, and bills of lading.

(Note the results of the two European conferences on these subjects.)

3. Uniform (a) classification of merchandise, (b) customs regulations, (c) consular certificates and invoices, (d) port charges.

(See the report adopted by the Fourth International American Conference, at Buenos Aires, 1910.)

4. Uniform regulations for commercial travelers.

Consider in this relation the question of a certificate to be issued by the proper department of the government of the country from which the traveler comes that the bearer is a bona fide commercial traveler, this certificate to be properly viséed.

5. To what extent further legislation may be necessary concerning trade-marks, patents and copyrights. (See the treaties adopted by the Fourth International American Conference.)

6. The establishment of a uniform low rate of postage and of charges for money orders and parcels post between the American countries.

7. The extension of the process of arbitration for the adjustment of commercial disputes.

II. Organization.

1. That for the purpose of carrying into effect the resolutions of the Conference, and particularly for bringing about uniformity of laws on the subjects embraced in those resolutions, there be established an international high commission, to be composed of not more than nine members, resident in each country, to be appointed by the minister of finance of such country. The aggregate members thus appointed shall constitute the commission.

2. That for the purpose of aiding the International High Commission and co-ordinating its work there be created in the Pan American Union a bureau, whose chief shall receive a salary of not less than $5000 (gold) per annum; and it is recommended that, in view of his initiative in bringing about the conference, the governing board of the Pan American Union invite the Hon. William G. McAdoo, Secretary of the Treasury of the United States, to suggest the name of the first chief of this bureau. Expenses of the bureau, including the salaries of the chief and his assistants, to be paid by the Pan American Union, in whose budget a corresponding increase shall be included.

3. The American governments are requested to instruct their diplomatic and consular officers and their commercial attachés to co-operate with the International High Commission and with the bureau.

The bureau shall be authorized to obtain in each country such expert assistance as may be necessary to the prosecution of its

work, the expenses thus incurred to be treated as a part of the expenses of the bureau.

4. The bureau shall make to the governing board of the Pan American Union, for distribution among the governments concerned, and to the International High Commission, an annual report.

The bureau shall make to the next International American Conference a full report of its proceedings up to that time, with recommendations as to future work.

HON. WILLIAM C. REDFIELD, *Chairman.*
SAMUEL HALE PEARSON.
IGNACIO CALDERON.
AMARO CAVALCANTI.
LUIS IZQUIERDO.
SANTIAGO PEREZ TRIANA.
ROBERTO ANCIZAR.
JOHN M. KEITH.
PABLO DESVERNINE Y GALDOS.
FRANCISCO J. PEYNADO.
VICENTE GONZALEZ.
JUAN S. LARA.
LEOPOLD CORDOVA.
PEDRO RAFAEL CUADRA.
RAMON F. ACEVEDO.
WILLIAM WALLACE WHITE.
ISAAC ALZAMORA.
ALFONSO QUIÑONES.
CARLOS MARIA DE PENA.
PEDRO RAFAEL RINCONES.

Members representing the United States:

CHARLES S. HAMLIN.
JOHN BARRETT.
CHARLES A. CONANT.
D. R. FRANCIS.
JOHN HAYS HAMMOND.
JOHN BASSETT MOORE.
GEORGE N. NUMSEN.
W. L. SAUNDERS.
WILLARD STRAIGHT.
SAMUEL UNTERMYER.

REPORT

OF THE

COMMITTEE ON GOVERNMENT LIENS ON REAL ESTATE.

(To be presented at the meeting of the American Bar Association, at Salt Lake City, Utah, August 17-19, 1915.)

To the American Bar Association:

Your Special Committee on Government Liens on Real Estate begs leave to report that the only matter pending before your committee relates to the removal and disposition of government liens.

The last report of your committee recommended that an effort be made to secure the passage by Congress of the proposed act embodied in that report, which was approved and appears on pages 626 to 628 of the proceedings of 1914. No effort has been made by your committee to bring about the enactment of the legislation mentioned, during the past year, as it was deemed better policy that the matter be presented to the Congress which will convene in December of the present year, as, in view of the great amount of business pending before the short session of the last Congress, it seemed to be unwise to attempt to obtain the passage of the bill.

Your committee therefore respectfully recommends that the matter be referred to a like committee to be appointed by the next President of your Association, with instructions to cause the proposed act to be presented to the Sixty-fourth Congress.

Respectfully submitted,

JOHN T. RICHARDS, *Chairman,*
FRANCIS LYNDE STETSON,
JOS. M. STAYTON.

REPORT

OF THE

COMMITTEE ON INSURANCE LAW.

(To be presented at the meeting of the American Bar Association, at Salt Lake City, Utah, August 17-19, 1915.)

To the American Bar Association:

At the annual meeting of 1913, the Association directed the Committee on Insurance Law to co-operate with the Senate and House Committees of Congress on the District of Columbia, in the preparation of a so-called model insurance code for the District of Columbia. This action was with the design that such a code, after its approval by the Association, might be enacted into law by the Congress and adopted by the several states.

Since the 1913 meeting of the Association, this committee has been at work on the proposed code. After several meetings and much discussion, a tentative draft of a proposed law was printed and widely circulated among insurance lawyers and officials, but the committee reported at the 1914 meeting of the Association that it was not ready to report the code to the Association.

The Association at the 1914 meeting instructed this committee to continue the work of preparing the proposed code, and to report it, when completed, to the Association and to the Senate and House Committees on the District of Columbia.

During the last year the committee has devoted considerable time in attempting to perfect the code. At the meeting of the committee in May, amendments and modifications were approved. The committee is now considering further changes and an amended draft of the code will soon be prepared, printed and distributed. The committee desires more time for further criticisms and suggestions. The nature and comprehensive scope of the code require much time for deliberation over its many provisions.

The committee, therefore, is not ready to report a bill, and we recommend that this committee be authorized to continue the work of preparing the proposed model code for the regulation of insurance in the District of Columbia, and instructed to report

the proposed code, when it is completed by the committee, to the Association and to the Senate and House Committees on the District of Columbia.

ARTHUR I. VORYS,
ASHLEY COCKRILL,
CHARLES W. FARNHAM,
ARCHIBALD G. THACHER,
RODNEY A. MERCUR.

June 14, 1915.

REPORT

OF THE

COMMITTEE ON INTERNATIONAL LAW.

(To be presented at the meeting of the American Bar Association, at Salt Lake City, Utah, August 17-19, 1915.)

To the American Bar Association:

Your Standing Committee on International Law respectfully submits its annual report. Its report of last year went no further than August 5, the discussion of the great European and Asian War being deemed inexpedient in view of the President's proclamation of absolute neutrality. It is the purpose of your committee to adhere to the attitude of absolute neutrality invoked by the President.

In accordance with its practice of many years, it has tabulated and briefly enumerates the treaties negotiated, confirmed, or proclaimed by the United States and the main incidents affecting the international relations of our country since the preceding report:

1914.

August 6. *Nicaragua—United States.* A new Nicaraguan Canal Treaty was signed.

Rev. of Revs. (N. Y.), 50, 294.

American Journal Int. Law, Vol. 8, p. 894.

August 7. *European War.* The United States announced its neutrality in the war between Austria and Russia.

Americal Journal Int. Law, Vol. 8, p. 894.

August 9. *European War.* Great Britain issued a list of articles she would treat as contraband of war.

American Journal Int. Law, Vol. 8, p. 894.

August 10. *European War.* Germany issued a list of articles she would treat as contraband of war.

R. Gesetzb., No. 50, 1914.

American Journal Int. Law, Vol. 8, p. 894.

August 11. *European War.* The United States issued a statement dealing with questions of neutrality in answer to complaints filed with the Department of State.

Senate Doc. No. 363, 63d Cong., 2d Sess.

American Journal Int. Law, Vol. 8, p. 894.

August 13. *United States.* The Senate advised the ratification of 18 treaties for the advancement of peace, being with the Argentine Republic, Bolivia, Brazil, Chile, Costa Rica, Denmark, Guatemala, Honduras, Italy, Netherlands, Nicaragua, Norway, Persia, Portugal, Salvador, Switzerland, Uruguay and Venezuela. The treaties with the Dominican Republic and Panama were not acted upon.

Washington Post, August 14, 1914.

American Journal Int. Law, Vol. 8, p. 895.

August 14. *Nicaragua—United States.* Five hundred United States marines were landed at Bluefields, with consent of Nicaragua, to preserve order.

Rev. of Revs. (N. Y.), 50, 244.

American Journal Int. Law, Vol. 8, p. 895.

August 14. *European War.* United States announced its neutrality in the war between Austria and France.

American Journal Int. Law, Vol. 8, p. 895.

August 15. *European War.* Announcement made that the United States Government would look with disfavor on loans by American bankers to any nation engaged in the European War.

New York Times, August 16, 1914.

American Journal Int. Law, Vol. 8, p. 895.

August 18. *European War.* The United States announced its neutrality in the war between Belgium and Germany.

American Journal Int. Law, Vol. 8, p. 895.

August 18. *United States.* The President signed the amendment to the Panama Canal Act under which foreign-built ships may be admitted to American registry for the overseas trade.

August 20. *European War—Great Britain.* Order in Council announcing that Great Britain, France and Russia will observe the provisions of the declaration of London with certain modifications as regards contraband and conditional contraband of war.

London Gazette, 28879.

August 21. *Salvador—United States.* Ratifications exchanged of the agreement of May 13, 1914, extending the duration of the Arbitration Treaty of December 21, 1908.

English and Spanish Texts, U. S. Treaty Series No. 596.

American Journal Int. Law, Vol. 8, p. 896.

August 24. *European War.* The United States announced its neutrality in the war between Germany and Japan.

American Journal Int. Law, Vol. 8, p. 896.

August 25. *European War—France.* Decree announcing that provisions of declaration of London will be followed in present hostilities.

J. O., August 26, 1914.

London Gazette, 28879.

September 1. *European War.* The United States announced its neutrality in the war between Austria and Belgium.

American Journal Int. Law, Vol. 8, p. 896.

September 2. *European War.* The President of the United States signed the act guaranteeing shipping against war risks. The bureau provided for thereby was opened September 28. For list of contraband see

New York Times, September 29, 1914.

American Journal Int. Law, Vol. 8, p. 896.

September 4. *European War.* The Emperor of Germany sent a message to the President of the United States protesting against alleged atrocities of the Allied troops. Text: Washington Post, September 1, 1914. The President's reply September 16, 1914, Washington Post, September 17, 1914.

American Journal Int. Law, Vol. 8, p. 897.

September 10. *European War.* Turkey repudiated the capitulations. These are a series of conventions, treaties and privileges, beginning in 11th century, exempting foreigners in the Ottoman Empire from local jurisdiction, civil or criminal. They accord extraterritorial jurisdiction to the representatives of foreign countries over their nationals in Turkey. The United States protested against such repudiation, as did many other powers.

Washington Post, September 11 and 17.

American Journal Int. Law, Vol. 8, p. 897.

September 14. *European War—Russia.* Under imperial ukase Russia announced that the provisions of the declaration of London will be observed by Russia during the present war, subject to the modifications adopted by the British and French Governments as declared in the British Order in Council of August 20, 1914, and the French Decree of August 25, 1914.

London Gazette, 28918.

September 15. *Mexico—United States.* The President of the United States ordered the withdrawal of the U. S. troops from Vera Cruz.

Washington Post, September 16, 1914.

American Journal Int. Law, Vol. 8, p. 897.

September 17. *European War.* The Belgian Commission presented to the President. U. S. extended evidences as to atrocities committed by the Germans in the present war.

New York Times, September 17, 1914.

American Journal Int. Law, Vol. 8, p. 897.

September 19. *Abyssinia—United States.* Commercial treaty proclaimed. This treaty was signed June 19, 1914, provides that treaty shall go into effect upon ratification by the U. S. and upon such notification to Ethiopia.

September 21. *European War.* The United States issued a statement showing the status of armed merchant vessels.

Washington Post, September 21, 1914.

American Journal Int. Law, Vol. 8, p. 897.

September 21. *European War.* Order in Council announcing proclamation adding to list of contraband of war.

London Gazette, 28910.

October 1. *Russia—United States.* Treaty signed for the advancement of peace. Ratification advised by the Senate October 14, 1914.

American Journal Int. Law, Vol. 9, p. 224.

October 10. *Panama—United States.* Protocol of agreement signed as to hospitality to be shown belligerent ships in their respective jurisdictions.

Eng. and Span. Texts, U. S. Treaty Series No. 597.

American Journal Int. Law, Vol. 9, p. 225.

October 13. *Guatemala—United States.* Ratifications exchanged of treaty for the advancement of peace.

Eng. and Span. Texts, U. S. Treaty Series No. 598.

American Journal Int. Law, Vol. 9, p. 225.

October 13. *China—United States.* The United States Senate advised the ratification of the treaty for the advancement of peace. Signed July 24, 1914.

Washington Post, October 14.

American Journal Int. Law, Vol. 9, p. 225.

October 13. *Ecuador, Greece—United States.* Treaties signed between United States and Ecuador and United States and Greece for the advancement of peace. Ratification of these treaties advised by the United States Senate, October 20, 1914.

October 15. *European War—United States.* The Department of State of the United States issued a statement as to neutrality and trade in contraband of war showing that such trade by individuals is lawful and that the nation has no obligation and the Executive has no power to prevent it, except that Congress has authorized the President to declare an embargo on the export of arms and ammunition to neighboring American Republics, and except that the outfitting or furnishing vessels in American ports or of military expeditions on American soil in aid of belligerents is prohibited by the Neutrality Statutes of the United States.

American Journal Int. Law, Vol. 9, p. 226.

Full text, Sup. American Journal Int. Law, Vol. 9, p. 122.

October 19. American marines landed at Cape Haitien, Haiti, to maintain order, after the town had been seized by revolutionists.

Rev. of Revs. (N. Y.), 50, 545.

October 21. *Norway—United States.* Ratifications exchanged of treaty for the advancement of peace. Signed June 24, 1914.

English and Norwegian Texts, U. S. Treaty Series No. 599.

American Journal Int. Law, Vol. 9, p. 226.

October 24. *Portugal—United States.* Ratifications exchanged of treaty for the advancement of peace. Signed February 4, 1914.

Portuguese and English Texts, U. S. Treaty Series No. 600.

American Journal Int. Law, Vol. 9, p. 226.

October 24. *Portugal—United States.* Ratifications exchanged of treaty extending duration of Arbitration Treaty of April 6, 1908.

Portuguese and English Texts, U. S. Treaty Series No. 601.

American Journal Int. Law, Vol. 9, p. 226.

October 29. *European War.* Great Britain gave notice that she would not recognize the article of the declaration of London exempting conditional contraband of war from seizure when destined for neutral ports.

London Gazette, 28957.

American Journal Int. Law, Vol. 8, p. 898.

November 6. *France.* Decree relative to the application of rules of international maritime law to the present war.

J. O., November 7, 1914.

November 10. *Great Britain—United States.* Ratifications exchanged of treaty for the advancement of peace. Signed September 15, 1914.

Text, U. S. Treaty Series No. 602.

American Journal Int. Law, Vol. 9, p. 207.

November 12. *Costa Rica—United States.* Ratifications exchanged of treaty for the advancement of peace. Signed February 13, 1914.

Spanish and English Texts, U. S. Treaty Series No. 603.

American Journal Int. Law, Vol. 9, p. 227.

November 12. *Costa Rica—United States.* Agreement extending duration of Arbitration Convention of January 13, 1909, for five years.

Spanish and English Texts, U. S. Treaty Series No. 604.

American Journal Int. Law, Vol. 9, p. 227.

November 13. The United States issued a proclamation as to the neutrality of the Panama Canal Zone and Panama.

American Journal Int. Law, Vol. 9, p. 228.

November 23. United States State Department announced that Turkey had made satisfactory explanation of the Smyrna incident of November 16. The shot was fired at the launch of the *Tennessee* to warn her away from mine fields.

R. of R., 51, 27, January.

December 1. *Spain—United States.* Ratifications exchanged of treaty for advancement of peace, signed September 15, 1914.

English and Spanish Texts, U. S. Treaty Series, No. 605.

American Journal Int. Law, Vol. 9, p. 228.

December 7. *France—United States.* French decree approving parcel post convention between French Guiana and the United States. Signed August 21, 1914.

J. O., December 14, 1914.

December 16. The United States Senate ratified with amendment the International Convention for safety of life at sea. Signed at London, January 2, 1914.

Washington Star, December 11, 1914.

American Journal Int. Law, Vol. 9, p. 228.

December 21. *Spain—United States.* Ratifications exchanged of treaty for the advancement of peace. Signed September 15, 1914.

English and Spanish Texts, U. S. Treaty Series No. 605.

December 21. *European War.—Russia.* Official bulletin of the laws published Imperial decree dated December 8-21, 1914, revising decree of September 1-14, 1914, concerning application of regulations of naval warfare as drawn up by declaration of London.

English Text, London Gazette, No. 29159.

December 26. *United States—Great Britain.* The United States protested against British interference with American trade. Text of American note and British preliminary reply in Congressional Record, January 13, 1915.

American Journal Int. Law, Vol. 9, p. 229.

December 28. *Great Britain.* Proclamation adding to list of contraband of war.

London Gazette 29016.

1915.

January 1. *Chile—United States.* The Chilean Senate approved the Arbitration Treaty.

P. A. U., 40, 122.

January 2. *European War.* Five German reservists taken off Norwegian-American liner *Bergenfjord* in New York harbor and placed under arrest for passport frauds.

New York Times History of the War, p. 1023.

January 7. *European War—Great Britain.* Preliminary note in answer to the American protests of December 26 handed American Ambassador.

Text, New York Times History of the War, Vol. 1, Part 6.

By agreement it was not made public until January 10.

January 7. *European War.* United States informed the German Ambassador that the United States cannot investigate the German charge that the British use dumdum bullets.

New York Times History of the War, p. 1020.

January 8. *Bolivia—United States.* Ratifications exchanged of treaty for the advancement of peace, signed January 22, 1914.

Spanish and English Texts, U. S. Treaty Series No. 606.

January 11. *Sweden—United States.* Ratifications exchanged of treaty signed October 13, 1914, for the advancement of peace.

English and Swedish Texts, U. S. Treaty Series No. 607.

January 19. *Denmark—United States.* Ratifications exchanged of treaty for advancement of peace. Signed April 17, 1914.

English and Danish Texts, U. S. Treaty Series No. 608.

January 24. *European War.* The Secretary of State of the United States in a letter to Senator Stone reviewed and declared the policy of the United States in the present war.

Times, January 26, 1915.

Senate Document 716, 63d Cong., 3d Sess.

January 25. *European War—Germany.* Secretary Bryan made public the text of Germany's notifications as to exequateurs granted by Belgium to foreign consular representatives and the reply of the United States.

New York Times, January 25.

January 22. *France—United States.* Ratifications exchanged of the treaty for advancement of peace. Signed September 15, 1914.

French and English Texts, U. S. Treaty Series No. 609.

February 2. *European War.* Great Britain announced that all grain and flour shipments to Germany, even if intended for non-combatants, would be seized. This because of the German Government's announced intention to take over and regulate the distribution of these commodities.

February 2. A German, Werner Van Horn, attempted to blow up the Canadian Pacific Railroad bridge between Vanceboro, Maine, and New Brunswick. He was arrested and sentenced to 30 days in jail on technical charge of injuring property in Vanceboro. Upon his release he was rearrested on Federal indictment and taken to Boston. His extradition was asked for by the British Ambassador but it is understood no action will be taken until the disposal of the case by the Federal authorities.

February 3. *Great Britain—United States.* British order in Council issued, extending to Australia, Canada, New Zealand, Union of South Africa and Newfoundland the provisions of the Copyright Act of 1911, by agreement with the United States.

London Gazette No. 29060.

February 4. *Germany.* Proclamation by the German Admiralty that, after February 18, 1915, the waters around Great Britain and Ireland would be in a state of blockade. Neutral ships were warned that they were in danger from submarines which might not be able to distinguish them from belligerent ships.

Text of Memo., Washington Post, February 7, 1915.

February 6. *Great Britain—United States.* The English liner *Lusitania,* being warned of the presence of German submarines in the Irish Sea, hoisted the American flag "for the protection of neutral passengers and cargo."

New York Times, February 7, 1915.

February 10. *Great Britain—United States.* The United States addressed a note to Great Britain in regard to the use of the American flag.

Text, New York Times, February 12.

February 10. *United States—Germany.* The United States addressed a note to Germany in regard to the safety of American ships in war zone proclaimed February 4 by the German Admiralty.

Text, New York Times, February 12.

February 11. *Panama—United States.* Boundary convention between the Republic of Panama and the United States of America.

Spanish and English Texts, U. S. Treaty Series No. 610.

February 12. *Opium Convention.* United States, Netherlands and China ratify and put into effect the Opium Convention.

Washington Star, February 12, 1915.

February 16. *European War.* Great Britain seized the American ship *Wilhelmina,* bound for a German port with a cargo of wheat for civilian consumption. The seizure occurred in Falmouth harbor where the *Wilhelmina* sought shelter from a storm. Negotiations are under way for the purchase of the cargo by England.

February 16. *European War.* Germany in a communication sent through the American Ambassador at London, offers to abandon the war on merchant vessels if Great Britain will permit the free movement of foodstuffs to the civil population of Germany.

February 17. *European War.* Great Britain made a second and more complete reply to the United States note of December 26.

February 17. Great Britain answered the shipping protest of the United States of December 28.

Text in New York Times, February 18, 1915.

February 18. *European War.* German war zone declaration went into effect at midnight February 17.

Text in New York Times, February 18, 1915.

February 20. *European War.* The United States addressed identic notes to Great Britain and Germany respecting the establishment of war zones, blockades and embargoes. On March 5 and 8 notes were addressed to Great Britain and France on the subject of the embargo against supplies for Germany. Text of all notes and replies from Germany, France and Great Britain.

New York Herald, March 18, 1915.

February 24. *United States—Uruguay.* Ratifications exchanged of a treaty for advancement of peace. Signed July 20, 1914.

Spanish and English Texts, U. S. Treaty Series No. 611.

February 25. *European War.* Great Britain proclaimed a blockade of the coast of German East Africa as from February 25.

Text, Washington Post, February 26, 1915.

London Gazette No. 29084.

February 27. *European War—France.* The American steamer *Dacia,* formerly of the Hamburg-American Line, was seized by a French cruiser and taken into Brest as a prize. France is negotiating the purchase of the cargo of the *Dacia.*

New York Times, March 1-2, 1915.

March 1. *European War.* Great Britain and France declared all commercial intercourse by sea between Germany, Austria and Turkey and other nations prohibited. Cargoes now at sea are exempt. All vessels not destined to English or French ports will be detained but not confiscated. Text of identic notes of Great Britain and France.

Washington Herald, March 2, 1915.

New York Times, March 2, 1915.

London Gazette No. 29102.

March 2. *European War.* Text of German reply to American note of February 22, 1915.

New York Herald, March 2, 1915.

March 3. *Opium Convention.* Proclamation of the convention and final protocol between the United States and other powers relating to the suppression of the abuse of opium and

other drugs, signed at The Hague, January 23, 1912, and July 9, 1913, ratifications of which were deposited at The Hague by the United States, December 10, 1913.

French and English Texts, U. S. Treaty Series No. 612.

March 4. *United States.* The President signed the "Seamen's Bill," said to conflict with treaties with most maritime nations.

March 4. *Peru—United States.* Ratifications exchanged of the treaty for the advancement of peace. Signed July 14, 1914.

Spanish and English Texts, U. S. Treaty Series No. 613.

March 8. *Great Britain—Prize Court.* Held in case of 1000 tons copper sent from United States to Gothenburg, Sweden, seized by British Government, that the copper being for the neutral government of Sweden cannot be requisitioned by a belligerent.

New York Times, March 9, 1915.

New York Sun, March 9, 1915.

March 9. *Paraguay—United States.* Ratifications exchanged of treaty for the advancement of peace. Signed August 29, 1914.

Spanish and English Texts, U. S. Treaty Series No. 614.

March 10. *Germany—United States.* The German cruiser *Eitel Friedrich* came into Newport News, Va., for supplies and repairs. She brought the crews of British, French and Russian ships sunk by her, also the crew of the American ship *William P. Frye* which she sunk January 28 with her cargo of grain. The *Eitel Friedrich* was interned April 7 and on April 8 the German Government agreed to indemnify the owners of the *Frye.*

New York Times, March 11, 1915.

New York Times, April 8-9, 1915.

March 11. *European War—Great Britain.* Additional list of contraband.

London Gazette Nos. 29097, 29098.

March 11. *Great Britain.* Order in Council declaring a blockade against Germany in retaliation for the German declaration of a blockade of the waters around the British Islands.

London Gazette No. 29102.

March 16. *European War.* The German Prize Court at Hamburg rejects a claim for damages for loss of neutral goods sunk with a British ship.

New York Times, March 17, 1915.

March 18. *European War.* Texts of notes of the United States to France, Great Britain and Germany, with replies, respecting establishment of war zones, blockades, German Admiralty order of February 4 and British Order in Council published March 15.

New York Times, March 18, 1915.

March 19. *Italy—United States.* Ratifications exchanged of treaty for advancement of peace. Signed May 5, 1914.

Italian and English Texts, U. S. Treaty Series No. 615.

March 31. *Great Britain.* In contending in the prize court in favor of requisitioning a cargo of foodstuffs on the American steamer *Wilhelmina,* Solicitor for the Crown introduced a hitherto unpublished Order in Council providing that the Crown might requisition any neutral ship. This changes Rule 28, March 9; the prize court had held copper bound to Sweden for the Swedish Government could not be requisitioned and used prior to condemnation.

New York Times, April 13.

New York Herald, April 1.

April 4. *Germany—United States.* The German Ambassador handed a note to the Department of State relating to the neutrality of the United States.

New York Times, April 10.

April 21. *Germany—United States.* The United States Government answered the note of the German Ambassador of April 4.

Text of reply, New York Times, April 22.

April 28. *United States—Germany.* The United States sent a note to Germany accepting the offer to pay for the *William Frye* on the ground of the violation of the Treaty of 1828 only.

New York Times, April 29-30.

May 1. *European War.* The German Embassy published in the American newspapers a warning to Americans not to travel in English vessels.

May 7. *European War.* The Cunard liner *Lusitania* was torpedoed off Kinsale, Ireland, at 2 P. M., by a German submarine without summons and sank with great loss of life. One hundred and fifteen Americans perished.

May 14. *European War.* The United States Government gave out the text of a note to the German Government through the American Ambassador in Berlin stating the position of the United States as to the sinking of the *Lusitania* and denying the right of a belligerent to sink merchant vessels without warning and without putting in safety crew and passengers.

Text, New York Times, Herald, Sun, May 14, 1915.

May 22. *The Pan-American Financial Congress.* The Pan-American Financial Congress met at Washington, D. C. It took steps to promote facilities for transportation and for uniformity of laws among the nations represented.

May 24. *European War—United States.* Neutrality proclamation issued covering Italy's entry into the European War.

New York Times, May 26, 1915.

May 28. *European War.* Note sent to Germany on the subject of the *Cushing* and *Gulflight.* Answer received from Germany, June 4.

New York Times, June 5.

New York Herald, June 5.

May 31. *European War.* The German Government replied to the note of the United States explaining attacks on the American steamers *Cushing* and *Gulflight* saying that "the German Government has no intention of submitting neutral ships in the war zone, which are guilty of no hostile acts, to attacks by a submarine, or submarines or aviators." It intimates regret and indemnification in case of mistake where the injured ship was not in fault. It suggests reference to the International Commission of Inquiry as provided by The Hague agreement, if necessary. As to the sinking of the *Lusitania,* it suggests that she was an auxiliary British cruiser, carrying guns, that the British Admiralty had instructed British merchantmen to attack submarines by ramming and offered prizes therefor and that the *Lusitania* could not be therefore recognized as "undefended." That

she further carried Canadian troops and war material. That the German Government was therefore justified in attacking her. That her sudden sinking is attributed to the explosion of the ammunition on board caused by a torpedo. It does not make this a final answer.

June 2. *Mexico.* The President communicated to the leaders of all Mexican factions, notice that unless they compose the internal disorders of Mexico and secure order some other means will be found by the United States.

Washington Post, June 2, 1915.

June 4. *Germany—United States.* Germany expressed regret at the torpedoing of the American vessel *Gulflight,* said she was mistaken for a belligerent and promised full compensation, also expressed regret at the attack on the *Cushing* and requested further facts.

Your committee is compelled to file its report at this date, though incidents of international significance are of daily occurrence.

They express the hope that the rules of international law, founded as they are on the obligations of humanity and of justice, may recover and reassert their beneficent authority.

The violence of the present almost world-wide war has tended to stifle but cannot abolish principles so deeply planted in human necessity. They earnestly hope that the efforts of the Government of the United States addressed, to the maintenance of neutral rights and of international humanity and justice, may help to limit the severities of war, which have so notably increased, and tend to restore peace to the nations whose struggle afflicts the world.

CHAS. NOBLE GREGORY, *Chairman,*
JAMES BROWN SCOTT,
THEODORE S. WOOLSEY,
CHARLES CHENEY HYDE,
MATHEW GERING,

June 8, 1915.

REPORT

OF THE

COMMITTEE TO OPPOSE JUDICIAL RECALL.

(To be presented at the meeting of the American Bar Association, at Salt Lake City, Utah, August 17-19, 1915.)

To the American Bar Association:

The undersigned, appointed for the year 1914-1915 as your Committee to Oppose the Judicial Recall, respectfully sumbit the following report:

The Climax of Judicial Recall Passed.

Our last report showed that the judicial recall agitation was already discredited through the propaganda of your committee against this doctrine of lawlessness. The American people had, in many localities, been induced to favor, and in some states to adopt, the proposition of judicial recall, either in the form of the recall of judges or of the recall of judicial decisions, or both. This movement was but a temporary and local result of the demagogic appeals to passion and prejudice which had been indulged in by certain agitators, some of them in high places, whose craze for change led them to become allies of socialism. For a time their hold upon the people was strong because their proposals for radical innovations, striking at the very foundation of our constitutional form of government, were forced upon the favorable consideration of voters through the prestige of the present or past rank of those who were urging them before the people. The contest between the advocates and opponents of judicial recall has been a contest between prejudice and enlightenment. In such a contest the ultimate advantage must be with those who represent conservative intelligence. The opposition to the judicial recall has been carried on by organized and persistent work in bringing home to the mind of the American citizen the true character of the measures which were proposed as a specific remedy for evils admitted to be present in the administration of justice. It was only necessary to discover to the American people the fundamental fallacy of judicial recall in order to insure its repudiation

as a possible remedy, and, indeed, its practical elimination from American politics.

From our experiences of former years it seemed to us a year ago that the then coming year would prove that the judicial recall had passed its climax and that the contest represented by your committee had been successful. Nevertheless, with the convening of over 40 state legislatures and with the advocacy of judicial recall then still persistent, we entered upon our year's work with many feelings of apprehension. The members of your committee have stood as outposts, each in his own state, to guard against further encroachments.

We are pleased to report that, during the past year, not only has no advance been made by the opposition, but that, on the contrary, we have been compelled to meet in only a few instances, and in those successfully, any activity from the other side. It cannot be said that the judicial recall is dead. So far, however, as concerns further progress at the present time, it is beaten "to a frazzle"; although that may not yet be openly admitted by some publicists whose bent of mind is so socialistic that judicial recall has with them become a hopeless chronic obsession.

Reports from the States.

The latest reports show that in all of the states where there has been no special activity of judicial recall agitation there is less likelihood than ever that the question will be seriously agitated. In many states where the proposal had seriously been made to establish the judicial recall, but had been defeated, it has grown more and more in disfavor. In states where it has been attempted during the past year to extend its adoption, the measure has been defeated more quickly and by greater majorities than ever before.

In Kansas the constitutional amendment for the recall of public officials, including judges, which was submitted under the proposal of the legislature of 1913 for adoption by the people at the general election in November, 1914, was adopted. With this exception the states which have adopted the judicial recall in any form are the same as those enumerated in our report for the year 1912-1913. We think that it may be safely said that Kansas will remain the last state to adopt any form of judicial recall.

In Minnesota the constitutional amendment for the recall of public officials including judges, which was proposed by the legislature of 1913, was defeated at the general election in November, 1914, when it lacked about 40,000 votes of the number necessary for its adoption. This was after a special campaign of opposition, conducted under the direction of the Minnesota members of your committee, in which the prize arguments of a law school student and of a high school student, both sons of Minnesota, were widely and effectually used. At the same time the constitutional amendment, which was a part of the measure to increase the number of Supreme Court judges, by which more than a majority of the Supreme Court were made necessary to declare a statute unconstitutional, was defeated; and that for the reason that it thus limited the usual powers of the court. The Minnesota legislature of 1915 rejected a bill proposing a constitutional amendment for the recall of public officials, including judges. It passed a bill proposing a constitutional amendment to increase the number of Supreme Court judges from five to seven, but without any restriction, as adopted by the legislature of 1913, that it should require more than a majority to declare a statute unconstitutional. The attitude of the Minnesota legislature of 1915 toward the judicial recall, as thus shown, is emphasized by the fact that a constitutional amendment for the adoption of the initiative and referendum was passed. The latter bill renewed the proposition which had been defeated at the general election in 1914.

In the Massachusetts legislature of 1915 a bill was introduced by the only Socialist member providing for a constitutional amendment for judicial recall, but it received substantially no support.

In the North Dakota legislature of 1915 a bill proposing judicial recall was killed in the House, whereas two years before the same bill had passed the House by a majority of about two and one-half to one and had been finally killed in that legislature by a margin of only one vote.

In Colorado there is a large and growing sentiment in favor of repealing the constitutional amendments adopted in 1912 providing for recall of judges and recall of judicial decisions. The increasing reaction in that state against judicial recall has not, however, as yet reached the point where it is advisable to press

the matter of repeal. The delay may be advantageous, for in the meantime Colorado will continue to furnish practical demonstrations in support of the arguments which we have urged against the recall of judicial decisions. One example is significant: The constitution of Colorado empowers the city of Denver to control its own local affairs. Denver, therefore, comes within the judicial recall amendment, permitting the citizens of Denver by a majority vote to recall a Supreme Court decision involving the enforcibility of a city charter provision as against the state constitution. That constitution provides for prohibition throughout the state. The "Wets" are in a majority in the city of Denver; and in the contest which is now on between the "Wets" and "Drys" of Denver, the Supreme Court of the state will probably hold the constitutional state-wide prohibition clause to apply to Denver, whereupon the "Wets," within the city, will invoke the decision recall and by submitting such decision of the Supreme Court to the electors of the city will doubtless bring about its reversal. Many prohibitionists have heretofore strenuously advocated the judicial decision recall as adopted in 1912. They now see that it may result in at least a partial failure in Colorado of the prohibition movement; and that the idea of local option has been established, not only with reference to the liquor question, but also with reference to the question of the enforcibility of the decisions of the highest court of the state.

In Nevada the movement for judicial recall has been turned into a movement to revoke recall of judges already adopted.

In Illinois the situation is summarized in the statement of a legislator who was formerly in favor of judicial recall, but who now says, "We have got done doing that sort of thing."

From Montana we hear that the matter was not mentioned in the recent state legislative assembly; "and were it not for the ravings of disgruntled Socialists it would die a natural death."

In New York it is reported "that owing to the militant attitude of the State Bar Association upon the subject, and the high standing of its members, who have presented a united front in opposition to this destructive vagary, such demand as heretofore existed for it in the State of New York is practically dead." The lawyers there have united in denouncing judicial recall as "a measure designed and used by aspiring and unscrupulous dema-

gogues." While the present constitutional convention in New York invites the suggestion of many vagaries, there seems to be no disposition seriously to propose any form of judicial recall; and, considering the make-up of the convention, it may be expected that such proposal will not meet anything but overwhelming defeat.

Without mentioning other states in detail, the conclusion seems to be unanimous that there is now less than ever before probability of the further extension in this country of this fallacy; and that in the states where it has been adopted the general sentiment has turned in favor of a movement to rid the state constitutions of this experimental excrescence which has been grafted upon them. This change is exemplified in a report that comes from Connecticut where it is said "that the supporters of the judicial recall in any form are so few that it is difficult to find them with a microscope, except one or two of the leaders of the Progressive Party, and they are so mum about it that it would seem as if they had forgotten there was ever such an issue." From Kentucky: "I believe judicial recall is dead. I believe interest in it has waned enormously, and that it is no longer popular. I believe it is thoroughly discredited. Inasmuch, therefore, as the people have been thinking on the question, and especially as they have begun to lean against it, I hope that it is the opportune time to improve judicial tenure," and from West Virginia where it is said that criticism of the courts has not yet led to the demand for radical change of judicial recall, but for less drastic remedies.

The report from Missouri seems to summarize the present situation throughout the country. There it is reported that in the legislature of this year no legislation was had, and no attempt was made at legislation, in favor of judicial recall: "The agitation for this measure is not only subsiding, but a very decided opposition to it has set in. The country is now on the road to have normal conditions restored and without renewed disturbance, unless the old time reactionaries, pure and simple, become overconfident and invite renewed disturbance."

It would be misleading to characterize the judicial recall movement as safely dead. It is down and out in the sense that a contestant is down and is taking the count. For some time yet

there will be constant danger that neglect of the situation may find us suddenly confronted with a revived antagonist. This Association should not withhold any necessary means of safeguarding the situation.

Possibilities of Revival.

The persistence of this fallacy presents many possibilities of its revival, in one form or another. Within the past year the American Judicature Society has in the course of its work "to promote the efficient administration of justice," issued a bulletin which treats of proposed reforms in the organization of the courts. It proposes the abolition of the elective system of judges, and then, as a sop to the lingering predilection in favor of judicial recall, it is proposed to add to the present method of retirement of judges through impeachment, not only the right of removal upon charges made and adjudicated by the state legislature and by a judicial council, but also the retirement by a fourth method. By this fourth method it is proposed to submit to the electorate at certain intervals of time the proposition, "shall ———— (naming the judge) be continued in office?" If the vote is in the affirmative the judge remains in office. If in the negative, then the judge goes out of office and the vacancy is filled by appointment as in the case of original selection. It is argued that this last proposition is not in reality a judicial recall and that it simply preserves the present periodic power of retirement, existing under the elective system, at the same time that it eliminates many of the objectionable features of that system. It is quite probable that sooner or later the American Bar Association will be asked to approve such a proposition. That such a measure should be proposed by any society whose active members comprise well-known lawyers, is significant of the extent to which the judicial recall fallacy has taken hold. It shows that judicial recall is dead only in spots. This proposition bows too much to the enemy. It prescribes a poison in modified regular doses for the purpose of curing those who have become addicted in a dangerous degree to a vicious narcotic. It is a remedial tapering off, a sort of conciliatory concession, under the guise of a remedy, to a vicious appetite which had temporarily seized upon the electorate. Logically, it is impossible; and we

trust that the American Bar Association will not be caught in a proposition to remedy the organization of the courts by the disorganization of constitutional government involved in any measure which gives over to the electorate the arbitrary power to retire a judge during the term of office for which he has been elected or appointed.

Bibliography.

Important discussions, which do not appear in the former bibliographies of the committee, include the following:

AFFIRMATIVE.

"Some Myths of the Law," by Walter Clark, Michigan Law Review, November, 1914.

NEGATIVE.

"Responsibility of the Lawyer," by John M. Zane, address before the graduating class of the John Marshall Law School, Chicago, June 27, 1914.

"Vote 'No (X)' on the Proposal (No. 10) an Amendment to Article Seven (7) of the Constitution Providing for the Recall of Public Officials; to be submitted at the next General Election," by Harvey S. Hoshour of Duluth, Minnesota, and Arthur O. Lee of Madison, Minnesota, being the first prize arguments in two prize contests, (1) for students of the Minnesota law schools, and (2) for students of Minnesota high schools, against the Recall of Judges. These arguments were widely published and distributed in a successful campaign against the adoption of the constitutional amendment for the recall of public officials, including judges, proposed by the Minnesota Legislature of 1913, for adoption at the general state election in November, 1914.

Report of the New York State Bar Association Committee on the Duty of Courts to Refuse to Execute Statutes in Contravention of the Fundamental Law, presented January 22 and 23, 1915.

"The Citizen and the Constitution," by Alton B. Parker, 23 Yale Law Journal 631, June, 1914.

"Lord Mansfield: An Example to Those Who Would Undermine the Independence of the Judiciary," by Harrison J. Conant, Green Bag, September, 1914.

"The Evolution of the Independence of the Judiciary." Presidential address by Hampton L. Carson, before the Pennsylvania Bar Association, June 30, 1914.

During the year the Chairman of this committee has made the following addresses:

"The Lawlessness of the Judicial Recall," address before South Dakota State Bar Association, at Pierre, S. D., January 14, 1915.

"The Lawyer as Amicus Curiæ," address before graduating class of John Marshall Law School at Chicago, Illinois, June 22, 1915.

RECOMMENDATIONS.

We recommend that the American Bar Association maintain its organized opposition to judicial recall; and that the work of its committee be continued.

Respectfully submitted,

ROME G. BROWN, Minneapolis, Minn., *Chairman,*
LAWRENCE COOPER, Huntsville, Ala.,
EVERETT E. ELLINWOOD, Bisbee, Ariz.,
GEORGE B. ROSE, Little Rock, Ark.,
CURTIS H. LINDLEY, San Francisco, Cal.,
FRANK E. GOVE, Denver, Col.,
WILLIAM BROSMITH, Hartford, Conn.,
WILLARD SAULSBURY, Wilmington, Del.,
CLARENCE R. WILSON, Washington, D. C.,
WILLIAM A. BLOUNT, Pensacola, Fla.,
ALEXANDER R. LAWTON, Savannah, Ga.,
DAVID L. WITHINGTON, Honolulu, Hawaii,
JAMES H. HAWLEY, Boise, Idaho,
GEORGE T. PAGE, Peoria, Ill.,
SAMUEL O. PICKENS, Indianapolis, Ind.,
E. M. CARR, Manchester, Iowa,
CHARLES BLOOD SMITH, Topeka, Kans,.
EDMUND F. TRABUE, Louisville, Ky.,
EDWIN T. MERRICK, New Orleans, La.,
WILFORD G. CHAPMAN, Portland, Me.,
WILLIAM L. MARBURY, Baltimore, Md.,
JEREMIAH SMITH, JR., Boston, Mass.,
CYRENIUS P. BLACK, Lansing, Mich.,
JAMES S. SEXTON, Hazlehurst, Miss.,

CHARLES NAGEL, St. Louis, Mo.,
D. GAY STIVERS, Butte, Mont.,
WILLIAM D. MCHUGH, Omaha, Neb.,
HUGH H. BROWN, Tonopah, Nev.,
JAMES SCHOULER, Intervale, N. H.,
RICHARD V. LINDABURY, Newark, N. J.,
WILLIAM C. REID, Roswell, N. M.,
A. T. CLEARWATER, Kingston, N. Y.,
HARRY SKINNER, Greenville, N. C.,
HARRISON A. BRONSON, Grand Forks, N. D.,
CHARLES B. WILBY, Cincinnati, Ohio,
JAMES R. KEATON, Oklahoma City, Okla.,
FREDERICK V. HOLMAN, Portland, Ore.,
RODNEY A. MERCUR, Towanda, Pa.,
MANUEL RODRIGUEZ-SERRA, San Juan, P. R.,
THOMAS A. JENCKES, Providence, R. I.,
P. ALSTON WILLCOX, Florence, S. C.,
U. S. G. CHERRY, Sioux Falls, S. D.,
JOHN B. KEEBLE, Nashville, Tenn.,
ROBERT G. STREET, Galveston, Tex.,
EDWARD B. CRITCHLOW, Salt Lake City, Utah,
GEORGE B. YOUNG, Newport, Vt.,
EPPA HUNTON, JR., Richmond, Va.,
CHARLES E. SHEPARD, Seattle, Wash.,
D. J. F. STROTHER, Welch, W. Va.,
BURR W. JONES, Madison, Wis.,
JOHN W. LACY, Cheyenne, Wyo.

REPORT

OF THE

COMMITTEE ON JURISPRUDENCE AND LAW REFORM.

(To be presented at the meeting of the American Bar Association, at Salt Lake City, Utah, August 17-19, 1915.)

To the American Bar Association:

Your Committee on Jurisprudence and Law Reform would respectfully beg leave to submit their report as follows:

There were referred to the committee for consideration and report three separate matters, viz.:

1. The matter of the protection of aliens, etc., referred to in the annual address of President Taft delivered at Washington in October, 1914, and concretely presented by House Bill No. 21073,

"For the Better Protection of Aliens and for the Enforcement of their Treaty Rights," introduced at the 3d session of the 63d Congress, January 20, 1915, by the Hon. Richard Bartholdt, M. C.

2. The matter of interest upon claims and judgments against the United States as presented by Senate Bill No. 4924 of the 62d Congress and more especially by Senate Bill No. 2274 presented at the 1st session of the 63d Congress on May 22, 1913, to amend Section 177 of the Judicial Code.

3. A Bill to regulate expert testimony presented by the Committee on Insanity and Criminal Responsibility to the American Institute of Criminal Law and Criminology, October 22, 1914, and unanimously approved by the Institute.

With respect to these several matters we beg to report and recommend as follows:

1. As to No. 1, *supra,* we recommend the approval of the proposed bill with the following changes:

In section 1 strike out the words,

"The aliens whose rights are affected may be joined as complainants with the United States in such equitable proceeding."

In section 2 strike out the words,

"and the consent of such citizen or subject of a foreign country, party defendant."

In section 3 strike out the word "like" so that the phrase shall read,

"shall constitute a crime against the peace and dignity of the United States, etc,"

in lieu and instead of

"shall constitute a *like* crime, etc."

We believe that whenever a matter is of sufficient importance to justify the President in directing action to be taken by the Attorney-General, the United States and the United States alone should be the complaining party, and its action should in no wise be complicated by the consent or non-consent of any other person whomsoever.

2. As to No. 2, *supra,* we base our recommendation on Senate Bill No. 2274. We recommend that the words,

"a judgment for the claimant shall include interest at 6 per cent per annum from the time the debt was due and payable, and in all other judgments against the United States the court shall include interest at the same rate as an element in the damages awarded if necessary fully to compensate the claimant,"

be omitted, and in lieu thereof the following words be substituted,

"the court shall in its discretion allow interest at a rate not less than 3 nor more than 4 per cent per annum from the time when in its judgment payment has been unjustly withheld."

The United States on its bonded indebtedness pays interest at the rate of 2, 3 and 4 per cent only and it ought not to be penalized by the acts or omissions of some careless, negligent or incompetent official.

Persons about to contract with the government may protect themselves in their contracts providing the amounts that they are to receive, and persons having claims that do not arise out of express contracts should be content with receiving a rate of interest that the United States accords to other parties contracting with it.

3. As to No. 3, *supra,* with some measure of hesitation we recommend the approval of the Keedy Bill except that, in lieu of section 3, we recommend a section as follows:

"SEC. 3. *Commitment to Hospital.*—Whenever in the trial of a criminal case, the accused pleads insanity as a defence, he shall be required to state in his pleading whether he claims that the malady is continuous and permanent or whether it is a temporary attack which has passed off at the time of the pleading. If the defence relied on is a continuing and permanent malady and if the existence of this malady becomes an issue in the case, the judge of the court before which the accused is to be tried or is being tried shall commit the accused to the state hospital for the insane or other appropriate hospital to be detained there until further order of the court."

Great complaint and in many instances justifiable complaint has been made in this Association of the intolerable—not to say criminal—"third degree" processes of police authorities.

We are unwilling to commit this Association to anything that even remotely resembles them.

Under such a commital it is reasonably certain that the conduct, manner, etc., of the accused will be sufficiently "observed." He will be segregated from his family, friends and counsel and it is difficult to say that he is not required to be a witness against himself—contrary to all constitutional safeguards.

In an attempt to relieve from what is considered to be an evil we think that this Association should ponder well and hesitate long before it gives its assent to what may prove to be a greater evil.

We return herewith as a part of this report copies of the several bills to which reference is herein made.

Respectfully submitted,

WILLIAM A. KETCHAM, *Chairman,*
CHARLES CLAFLIN ALLEN.
WILLIAM L. PUTNAM.
JERRY B. SULLIVAN.

IN THE HOUSE OF REPRESENTATIVES.

JANUARY 20, 1915.

Mr. Bartholdt introduced the following bill; which was referred to the Committee on the Judiciary and ordered to be printed:

A BILL

For the Better Protection of Aliens and for the Enforcement of their Treaty Rights.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the President of the United States be authorized to direct the Attorney-General, in the name and behalf of the United States, to file a bill in equity in the proper district court of the United States against any person or persons threatening to violate the rights of a citizen or subject of a foreign country secured to such citizen or subject by treaty between the United States and such foreign country; and that this provision shall apply to acts threatened by state officers under the alleged justification of a law of the legislature of the state in which such acts are to be committed. [The aliens whose rights are affected may be joined as complainants with the United States in such equitable proceeding]* and jurisdiction is hereby given to the proper district courts to maintain such action. The costs in such case, if awarded [against the complainant and] the United States, shall be paid by order of the Secretary of State out of the contingent fund of the State Department.

Sec. 2. That whenever an action, civil or criminal, is brought in a state court against a citizen or subject of a foreign country to enforce an act passed by the legislature of such state, which is deemed by the President to violate the rights of such citizen or subject of a foreign country, secured to him by treaty between the United States and such foreign country, it shall be lawful for the Attorney-General of the United States, on behalf and in the name of the United States [and with the consent of such citizen or subject of a foreign country, party defendant],* at any time before a hearing or trial upon the merits in such state court, to file an intervening petition for removal of said cause to the proper district court of the United States.

Upon the filing of such petition removal shall take place in accordance with the procedure in other cases for which removal is provided in the statutes of the United States, so far as the same is applicable, except that the Attorney-General shall not be required to file a bond for costs. The district court of the United States is hereby authorized to make an order for costs against the United

States in case the cause shall prove to have been improperly removed, to be paid by the Secretary of State, as in section 1 of this act. Upon the filing in the proper district court of the United States the cause shall duly proceed to trial, and the United States as intervenor shall be permitted to submit evidence and to be heard by counsel duly authorized, and the cause shall accordingly proceed to judgment, and shall be subject to review as other cases arising under the laws and Constitution of the United States.

SEC. 3. That any act committed in any state or territory of the United States in violation of the rights of a citizen or subject of a foreign country, secured to such citizen or subject by treaty between the United States and such foreign country, which act constitutes a crime under the laws of such state or territory, shall constitute a [like] crime against the peace and dignity of the United States, punishable in like manner as in the courts of said state or territory, and within the period limited by the laws of such state or territory, and may be prosecuted in the courts of the United States, and, upon conviction, the sentence executed in like manner as sentences upon convictions for crimes under the laws of the United States.*

SEC. 4. That the President of the United States is hereby expressly authorized to use the marshals of the United States and their deputies to maintain the peace of the United States when violated by the commission of such acts as are denounced in the preceding section; and should, in his judgment, the circumstances demand it, he is empowered to use the army and the navy for the same purpose.

* Changes recommended by the committee:

In section 1 strike out the words,

"The aliens whose rights are affected may be joined as complainants with the United States in such equitable proceeding."

In section 2 strike out the words,

"and the consent of such citizen or subject of a foreign country, party defendant."

In section 3 strike out the word "like" so that the phrase shall read,

"shall constitute a crime against the peace and dignity of the United States, etc.,"

in lieu and instead of

"shall constitute a *like* crime, etc." (See Report, *supra*.)

IN THE SENATE OF THE UNITED STATES.
MAY 22, 1913.

Mr. McCumber introduced the following bill; which was read twice and referred to the Committee on the Judiciary:

A BILL

TO AMEND SECTION ONE HUNDRED AND SEVENTY-SEVEN OF THE JUDICIAL CODE.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in an action against the United States to recover a liquidated debt [a judgment for the claimant shall include interest at 6 per centum from the time the debt was due and payable, and in all other judgments against the United States the court shall include interest at the same rate as an element in the damages awarded if necessary fully to compensate the claimant].† All judgments against the United States shall bear interest at the rate of 4 per centum from the date of such judgment until payment of the same.

A BILL

TO REGULATE EXPERT TESTIMONY.

SECTION 1. *Summoning of Witnesses by Court.*—Where the existence of mental disease or derangement on the part of any person becomes an issue in the trial of a case, the judge of the trial court may summon one or more disinterested qualified experts, not exceeding three, to testify at the trial. In case the judge shall issue the summons before the trial is begun, he shall notify counsel for both parties of the witnesses so summoned. Upon the trial of the case, the witnesses summoned by the court

† The committee recommend that the words "a judgment for the claimant shall include interest at 6 per cent per annum from the time the debt was due and payable, and in all other judgments against the United States the court shall include interest at the same rate as an element in the damages awarded if necessary fully to compensate the claimant,"
be omitted, and in lieu thereof the following words be substituted, "the court shall in its discretion allow interest at a rate not less than 3 nor more than 4 per cent per annum from the time when in its judgment payment has been unjustly withheld." (See Report, *supra.*)

may be cross-examined by counsel for both parties in the case. Such summoning of witnesses by the court shall not preclude either party from using other expert witnesses at the trial.

SEC. 2. *Examination of Accused by State's Witness.*—In criminal cases, no testimony regarding the mental condition of the accused shall be received from witnesses summoned by the accused until the expert witnesses summoned by the prosecution have been given an opportunity to examine the accused.

SEC. 3. *Commitment to the Hospital [for Observation].*—(Whenever in the trial of a criminal case the existence of mental disease on the part of the accused, either at the time of the trial or at the time of the commission of the alleged wrongful act, becomes an issue in the case, the judge of the court before which the accused is to be tried or is being tried shall commit the accused to the state hospital for the insane, to be detained there for purposes of observation, until further order of court. The court shall direct the superintendent of the hospital to permit all the expert witnesses summoned in the case to have free access to the accused for purposes of observation. The court may also direct the chief physician of the hospital to prepare a report regarding the mental condition of the accused. This report may be introduced in evidence at the trial under the oath of said chief physician, who may be cross-examined regarding the report by counsel for both sides.) ‡

SEC. 4. *Written Report by Witness.*—Each expert witness may prepare a written report upon the mental condition of the person in question, and such report may be read by the witness at the trial. If the witness presenting the report was called by one of the opposing parties, he may be cross-examined regarding his report by counsel for the other party. If the witness was sum-

‡ **Substitute section recommended by the committee to take the place of Sec. 3 in original bill:**

"SEC. 3. *Commitment to Hospital.*—Whenever in the trial of a criminal case, the accused pleads insanity as a defence, he shall be required to state in his pleading whether he claims that the malady is continuous and permanent or whether it is a temporary attack which has passed off at the time of the pleading. If the defence relied on is a continuing and permanent malady and if the existence of this malady becomes an issue in the case, the judge of the court before which the accused is to be tried or is being tried shall commit the accused to the state hospital for the insane or other appropriate hospital to be detained there until further order of the court." (See Report, *supra.*)

moned by the court, he may be cross-examined regarding his report by counsel for both parties.

SEC. 5. *Consultation of Witnesses.*—Where expert witnesses have examined the person whose mental condition is an element in the case, they may consult before testifying, with or without the direction of the court, and may prepare a joint report to be introduced at the trial.

REPORT

OF THE

SPECIAL COMMITTEE ON LEGISLATIVE DRAFTING.

(To be presented at the meeting of the American Bar Association, at Salt Lake City, Utah, August 17-19, 1915.)

To the American Bar Association:

The inaptness, confusion and obscurity of our legislation by nation and state is a subject which has been much referred to in addresses before your Association. Such criticisms have but reflected a feeling shared by practically all members of the Bar and the public generally, that the draftsmanship of much of our statutory law is poor. In your appointment of this Special Committee on Legislative Drafting, your Association recognized the fact that the Bar of the United States as organized in your Association should, if possible, not only call attention to the evils resulting from confused and poorly drawn statutes, but should also help to correct the evil by positive suggestion and constructive action.

The object of our committee is, as we understand it, to promote scientific legislative drafting. With the political, economic or social policy to be expressed by Congress or state legislatures we have nothing to do. Our business is to strive to impress on the members of the Bar, on legislatures, and the people generally, the fact that, given a definite policy to be effected, the proper arrangement and wording of the statute so that the intent may be clear and needless litigation and confusion avoided is a distinct art governed by scientific rules capable of definite expression. It is also our duty to point out to your Association how it may assist in improving what we may call the technic of our statutory law.

In our first report, that of 1913, we stated that our investigations convinced us that legislative reference and drafting departments conducted on proper lines provided efficient agencies to furnish legislatures with scientific and expert assistance in the drafting of legislation. As a result of our report your Association passed a resolution urging the formation, in connection with Congress and the various state legislatures, of official legislative

reference and drafting bureaus. Last year we were able to state that since the publication of our report of 1913 such official agencies had been created in four additional states, while Congress had appropriated $25,000 for legislative reference work under the direction of the Librarian of Congress, and the summary of existing state laws relating to legislative drafting and similar agencies, published as Appendix C of our 1914 report, showed that 22 states had already adopted some such agency.

Unfortunately the early date at which it is necessary to submit this report makes it impossible for us to append hereto, as we were able to do last year, an account of the action taken by state legislatures in relation to legislative drafting and reference bureaus and similar agencies during their recent sessions. During the year, however, your committee communicated with the directors of the various official drafting bureaus and similar agencies, asking them to let us have a short synopsis of their work, together with any observations which they might care to make in regard to the organization of their bureaus, and suggestions for further development which they might believe would be of interest to your Association. Your committee has arranged in Appendix C (*infra*) the replies received. We also reprint (see Appendix D) that portion of the report of the Joint Special Committee on Legislative Procedure of the Massachusetts Senate and House of Representatives recommending "the establishment of a new office to be called 'clerk of committee' to be an expert upon drafting legislation and to have charge of the detail of committee work," because it contains an excellent statement of the necessity for official expert assistance in the drafting of legislation, and also makes certain suggestions in regard to the organization and work of such official agencies, which are, we believe, worthy of consideration.

It is often asked whether an official drafting agency can be an impartial instrument to assist legislatures, committees and executive officials in preparing bills for submission to the legislature, irrespective of their political connections, of the purposes of the legislation, or the ends desired to be accomplished? Anyone at all familiar with the actual operation of existing drafting and legislative bureaus knows that the services of the expert draftsman connected with such bureaus can be secured by anyone

entitled to such services, irrespective of his political connections or the policy to be expressed in the act which they desire drawn. That an employee of such a bureau should attempt to promote legislation is, of course, conceivable. But the remedy is always self-acting. A drafting bureau, the members of which would so far forget their duties as to seek to promote legislation, must quickly lose public confidence. This fact and the fact that those engaged in the work rapidly acquire, even if they do not possess at the start, a professional code of ethics which regards the promotion of legislation as the one cardinal sin, form a great practical safeguard against any abuse on the part of the members of an official drafting bureau of their position as expert advisers in the technic of legislative drafting.

Your committee also addressed a letter to the secretaries of the different Bar associations, asking them what, if any, assistance their association furnished members of the legislature or others in the drafting of bills. Almost all the replies received were of a negative character. To this, however, there was a notable exception, namely: the action taken by the Nevada Bar Association. At the annual session of that association held in November, 1914, Mr. Hugh H. Brown made a report upon the work of this committee, and also on the establishment of legislative drafting and reference bureaus by different states. The result of his report was an appropriation of money by the Nevada Bar Association for the purpose of creating an unofficial and voluntary legislative drafting and reference bureau to assist the Nevada legislature. Mr. Brown, in his letter to the committee, states:

"The State Bar Association proceeded along these lines: (a) In order that the service might be at the disposal of the legislature throughout the entire session, and without waiting for a tardy enactment on the part of the legislature itself, creating a statutory bureau; and (b) because we felt that a practical demonstration of the efficiency of such a service would be a stronger argument in favor of a statutory enactment than any campaign of solicitation or education we might project."

Your committee has recently received a further report from Mr. Brown on the work of the voluntary bureau thus established during the recent session of the Nevada legislature, in which he states that the work of the unofficial bureau created a favorable impression and that the Nevada Association believes that they

have laid "a good foundation for the establishment by the next session of the legislature of an official bureau. Many of the legislators avail themselves of the unofficial bureau."

The promotion of legislative drafting and reference bureaus is but one of several ways in which your Association can promote scientific draftsmanship of our statutory law. In our report to your Association in 1913 we pointed out that there is no book written in the English language, in the light of administrative and judicial experience, on legal ways and means by which a given legislative policy can best be rendered effective. Until such a work exists the task of anyone who seeks to draft a statute will remain one of great difficulty, though he may have a clear conception of the policy he desires to have carried out. We believe, and we so expressed ourselves in the report referred to, that the most practical way in which this Association can do its part to promote scientific legislative draftsmanship is to help create a legislative manual containing a collection of directions or suggestions to draftsmen, and model clauses for constantly recurring statutory provisions. We also submitted as Appendix C of the 1913 report, a tentative draft of the contents of such a manual. As a result of our recommendation a resolution was passed by your Association directing this committee to prepare for submission to the Association, if further investigation should show such preparation to be practical, a legislative manual containing suggestions for drafting laws.

Last year, in connection with our report, we submitted as Appendix A and B tentative drafts of portions of the text of the manual on legislative drafting covering, "The Language and Arrangement of Statutes" (Appendix C, report of 1914), and "Provisions for Adoptive Acts" (Appendix B, report of 1914). The tentative text so submitted demonstrated the possibility of creating such a manual, as well as its usefulness, and your Association adopted a resolution directing us to prepare for submission to this Association a manual of legislative drafting. In accordance with this direction we submit this year tentative drafts of portions of the proposed text covering "Administrative Regulations" (see Appendix A), and "Penalties" (see Appendix B).

The work on the proposed manual can from its very nature be done only by those who have had experience in the practical problems dealt with in the text, and given thought and study to their solution. Under the most favorable conditions it will necessarily take several years to complete the text. Only when all the parts are completed and revised will your committee be in a position to ask your Association to give the work the stamp of your official approval. The chief value of the publication in your annual reports of the parts tentatively completed, aside from the fact that use is already being made of them by those charged with the duty of drafting statutes, is the fact that it affords an opportunity to members of your Association and others to submit to the committee criticisms and suggestions. Your committee is especially anxious to emphasize the fact that such criticisms and suggestions are earnestly invited.

In a resolution adopted by your Association in 1913 we were especially directed "to report what, if any, changes in existing legislative procedure, or procedure in connection with the operation of the initiative will tend to the improvement of our statutory law." Last year we were obliged to report: "The time occupied in the task of preparing (the tentative chapters of the manual on legislative drafting submitted) has been so great as to prevent the members of your committee undertaking a . . . . study . . . . of the initiative." This year your committee was informed that Mr. William A. Schnader, of the Philadelphia Bar, had made an elaborate study of the practical operation of the initiative in the states which have adopted that system of legislation. Your committee requested Mr. Schnader to give to the committee any suggestions which he might have for the improvement of the draftsmanship of initiative laws of the Constitutional Amendments. Mr. Schnader kindly complied with our request. It is his opinion that there are but two feasible ways for improving the draftsmanship of initiative laws and amendments:

First: That the indirect system of initiating laws and amendments should be established requiring both laws and amendments to go to the legislature before submission to the voters.

Second: That any state machinery now authorized to assist the legislature in drafting measures be required to extend its aid to those who desire to use the initiative, and that as the drafting

of legislative measures is aided and safeguarded by the extension of the duties and powers of legislative drafting bureaus, the same aids and safeguards should be applied to measures proposed under the initiative.

The reasons for these recommendations are set forth in his letter which we submit herewith as Appendix E.

The subject is one of increasing importance and Mr. Schnader's recommendations are entitled to careful consideration. We are not, however, as yet in a position to make to your Association any definite recommendations on the subject.

Your committee recommends the adoption of the following resolution:

"*Resolved*, That the Special Committee on Legislative Drafting be continued and directed to continue to prepare for submission to this Association a legislative manual which will contain a collection of directions, or suggestions, for drafting laws, and model clauses for constantly recurring provisions and problems, and the committee is hereby authorized to co-operate for the purpose with other organizations and individuals; and the committee is further authorized to continue any research pertinent to the improvement of the form of our statutory law and report the results of its investigations to this Association."

Respectfully submitted,

WILLIAM DRAPER LEWIS, *Chairman*,
HENRY C. HALL,
THOMAS I. PARKINSON,
ERNST FREUND,
JAMES D. ANDREWS,
J. MAYHEW WAINWRIGHT,
JOSEPH N. TEAL.

APPENDIX A.

TENTATIVE TEXT OF MANUAL FOR LEGISLATIVE DRAFTING.

TOPIC: ADMINISTRATIVE REGULATIONS.

I. IN GENERAL.

1. PRACTICE OF DELEGATION.

It is inevitable that administrative authorities should have power to make rules for certain purposes or under certain cir-

cumstances, and an express power to make rules is not uncommonly conferred upon them by American statutes.

The practice involves the question of the constitutional validity of the delegation of legislative power. It is conceded that there are limits to the extent to which such power may be delegated, but the limits have never been clearly defined; nor is there any generally accepted or easily applicable criterion to distinguish between administrative and legislative rules.

Nearly all cases in which there has been held to be an unconstitutional delegation of legislative power, are cases in which the operation or effect of some statutory provision has been made to depend upon an act of unregulated administrative discretion; cases in which the delegation of a power to make rules and regulations has been held to be unconstitutional have been very rare, the most conspicuous being those in which the legislature undertook to leave it to the insurance commissioner to prepare standard forms of insurance policies which were to be used exclusively (O'Neill *vs.* Insurance Co., 166 Pa. St. 72; Dowling *vs.* Insurance Co., 92 Wis. 63); the decision in California holding invalid the power given to the state viticulturist to make rules against the introduction and spread of vine diseases (Ex. p. Cox 63 Cal. 21) is against the strong current of authority (Butterfield *vs.* Stranahan, 192 U. S. 470; Hurst *vs.* Warner, 102 Mich. 238; Peo. *vs.* Van der Carr, 175 N. Y. 440; Isenhour *vs.* State, 157 Ind. 517; People *vs.* Tait. 261 Ill. 197); the statement in Tugman *vs.* Chicago, 78 Ill. 405, that powers of regulation should be delegated only to elected officers was merely a dictum.

The present tendency seems to be to recognize the validity of rule making powers to a very considerable extent, and probably experience alone can show to what lengths the legislature may or should justly go.

It will aid draftsmen to know the extent of the practice in the past, the forms in which the power has been granted, and the limitations and safeguards by which the exercise of the power has been surrounded.

It would on the other hand, at the present time be neither practicable nor desirable to define by constitutional provision the permissible scope of administrative regulation. It would be

impossible to devise a formula adequately expressing the proper limits of delegation.[1]

A very liberal and indiscriminate delegation of powers of regulation is undesirable, because it leads to diffuseness and uncertainty of the written law.

The observations in Mr. Winthrop's treatise on Military Law Regarding the Army Regulations are pertinent in this respect (Vol. I, p. 34):

"To the student, as well as in practice, army regulations are the most unsatisfactory element of our written military law. Presented in connection with statutes from which they are sometimes imperfectly discriminated; not unfrequently themselves partaking of the character of legislation and thus of doubtful validity; and fatally subject, as we have seen, to constant and repeated modification, their effect too often is to embarrass and mislead where they should, assure and facilitate. To render them entirely useful, they should in the opinion of the author, be reduced to the smallest available bulk; all that are really statutes and all that are of a legislative quality should be eliminated; only those should be included that are purely general, those relating to the business of the staff corps being left to be established by the heads of the same, subject to the approval of the President; and the authority to amend should be most rarely exercised."

Whatever therefore the rule of constitutionality, it is important to bear in mind, that the practice of American legislation in the past has been conservative, and that a similar conservative spirit is manifest in the judicial construction of delegated powers.

The English practice is equally conservative, while in Germany and France there seems to be a greater inclination to leave the enumeration or specification of matters falling within some principle to administrative regulation.

Thus the German Weights and Measures Act of May 30, 1908, is a brief measure leaving it to an Imperial Commission to see to

[1] In a recent case, Interst. Com. Commission *vs.* Goodrich Co., 224 U. S. 194, 214, 1912, the U. S. Supreme Court uses the following language:

"The Congress may not delegate its purely legislative powers to a commission, but having laid down the general rules of action under which a commission shall proceed, it may require of that commission the application of such rules to particular situations and the investigation of facts, with a view to making orders in a particular matter within the rules laid down by the Congress."

uniformity of standardization and to determine the conditions of certification, and the Commission thereupon issued a code consisting of 151 sections.

Again the German Pure Food Act of 1879 authorizes regulations prohibiting designated methods of preparation, preservation or packing, or prohibiting the sale of food of designated quality or under misleading designations, or prohibiting the sale of animals for slaughter or of food from animals where the animals suffer from diseases specified in the regulations, or the use of material or dyes specified in the regulations for the manufacture of articles of use or consumption, or the sale of oil below a specified grade. The act itself contains in the main only administrative provisions while the substantive part is practically altogether left to administrative regulation. No English or American food legislation goes to that extent.

A more conservative view is indicated in the Saxon Building Code, with regard to which an authoritative treatise says:

"It was necessary to attempt at least to express in the act the technical building provisions of general importance. There remained for executive regulation those provisions which had rather the character of formal requirements and official instructions to the appropriate authorities, the easy changeability of which according to changing needs is unobjectionable from a legislative and desirable from a practical point of view."

2. Terminology.

The terms "rules" or "regulations" are the most common and appropriate to designate the enactments of a rule making authority.

However, sometimes the word "order" or even "special order" (confined to a particular class) is used, although it would be better to reserve these terms to orders of particular or individual application.

The word "ordinance" is applied to enactments of the legislative bodies of municipal corporations, which in England are called by-laws. The latter term we apply to the rules of private corporations.

3. Matters Appropriate to be Delegated for Administrative Regulation.

The established practice indicates, at least approximately, under what conditions the legislature is justified in leaving a matter to administrative regulation.

The most important cases represent one of the following conditions:

1. That the matter relates to administrative organization, and does not directly affect the rights of individuals outside of that organization.

2. That action must be adapted to the exigencies of abnormal and unforeseeable conditions (*e. g.,* quarantine).

3. That the matter concerns only the technical detail of a legislative policy sufficiently indicated in the statute (food standards).

4. That the matter is so variable according to varying conditions that it is impracticable for the legislature to foresee all contingencies (rates; wages).

The most important distinction in rules and regulations is that between rules which impose duties and restraints upon persons not in the public service, and in their private dealings and transactions, and rules which affect only official conduct or private individuals in their relations and dealings with the public. A duty cast upon private individuals to enter into relations with public officials (particularly a duty to report) is however properly classed with the first category.

The first category is generally marked by the imposition of penalties for violation or non-compliance.

Procedural safeguards in making and publishing rules are generally only called for in connection with the first category.

4. Safeguards in Connection with the Delegation.

The safeguards are of three kinds:

(a) Indicating as far as possible the principles which are to be observed in framing rules and regulations.

(b) Procedural safeguards in the preparation and enactment of rules, particularly publicity, notice and hearing, and appeal.

(c) Submission to the legislature for cognizance or approval.

These safeguards are better developed in English than in

American legislation, and English models may therefore be advantageously consulted.

II. MATTERS DEALT WITH BY DELEGATED RULE MAKING POWER UNDER ESTABLISHED LEGISLATIVE PRACTICE.

The following are the most common and conspicuous matters which under the established practice of American and English legislation are left to be dealt with by rules made by administrative authorities.

1. Regulations Concerning the Performance of Official Duties by Subordinates.

A convenient model is found in U. S. Revised Statutes 161:

"The head of each department is authorized to prescribe regulations not inconsistent with law, for the government of his department, the conduct of its officers and clerks, the distribution and performance of its business, and the custody, use and preservation of the records, papers and property appertaining to it."

A power, similar in nature, but of a much wider scope, is given in U. S. Revised Statutes 1752:

"The President is authorized to prescribe such regulations, and make and issue such orders and instructions, not inconsistent with the Constitution or any law of the United States, in relation to the duties of all diplomatic and consular officers, the transaction of their business, the rendering of accounts and returns, the payment of compensation, the safekeeping of the archives and public property in the hands of all such officers, the communication of information, and the procurement and transmission of the products of the arts, sciences, manufactures, agriculture, and commerce, from time to time, as he may think conducive to the public interest. It shall be the duty of all such officers to conform to such regulations, orders, and instructions."

A very general power to prescribe duties is also given with regard to the Revenue Cutter Service:

U. S. Revised Statutes 2758:

"The Secretary of the Treasury may direct the performance of any service by the revenue vessels which in his judgment is necessary for the protection of the revenue."

U. S. Revised Statutes 2762:

"The officers of revenue cutters shall perform in addition to the duties hereinbefore described, such other duties for the collection and security of the revenue as from time to time shall be directed by the Secretary of the Treasury, not contrary to law."

2. Regulations Prescribing Forms to be Observed by the Public in Transacting Business with Some Office or Department.

Power to issue regulations of this kind seems to be less commonly granted; thus the Postmaster-General is merely given authority "to instruct all persons in the postal service with reference to their duties," and aside from matters of official routine, all regulations regarding the use of postal facilities by the public seem to emanate directly from the law.

The Secretary of the Treasury is given power to "prescribe forms of entries, oaths, bonds, and other papers" (251).

A very wide power is given to the Collector of Internal Revenue (321) to "prepare and distribute all the instructions and regulations, directions, forms, blanks, stamps and other matters pertaining to the assessment and collection of internal revenue."

Where proceedings of a semi-judicial character are conducted before some official authority, a rule-making power may be given in the form adopted by the Interstate Commerce Act, according to which the Interstate Commerce Commission "may, from time to time, make and amend such general rules or orders as may be requisite for the order and regulation of proceedings before it, including forms of notices and the service thereof (which shall conform, as nearly as may be, to those in use in the courts of the U. S.). (Interstate Commerce Act, 1887, 17.)

For the rule-making power of administrative commissions, the following is a comprehensive form (Illinois Public Utilities Act, 1913, 8):

"The commission shall have power to adopt reasonable and proper rules and regulations relative to the exercise of its powers, and proper rules to govern its proceedings, and to regulate the mode and manner of all investigations and hearings, and to alter and amend the same."

3. Regulations for the Organization, Recruiting and Tenure of the Public Official Service, or of Certain Branches Thereof.

As distinguished from regulations of the first and second class, they involve important questions of policy, of governmental efficiency, and of official status, and are proper subjects of direct

statutory provision. In monarchical countries the regulating power, however, belongs to the executive as an inherent, and not a delegated, right, and through the influence of European and especially English precedent, there is in America a liberal delegation of power to the Chief Executive. The English influence is particularly noticeable in civil service legislation. The reform in England took place by orders in council without parliamentary interference, and the Federal Act of 1883, following the English model, left details of elaboration likewise to executive rules, and that has become the common type of civil service legislation in America. The power of regulation covers matters of qualification, appointment, tenure and discipline.

It is at least doubtful whether the power to prescribe rules for the government of a branch of the official service, extending beyond mere details, can be exercised merely by virtue of the possession of the chief executive authority.

Attorney-General Cushing, in 1853 pronounced against the validity of the "Naval Code" promulgated without legislative authority (6 Ap. Att. Gen., p. 10), and this authority is now supplied (U. S. R. S. 1547).

See on this subject also Winthrop, Military Law, Vol. I, pp. 20-34.

The *civil service laws* are in the United States the most conspicuous instance of legislation through regulations or rules, and the manner of delegation therefore deserves particular attention.

The rules are to be made by the President, and the co-operation of the Commissioners is referred to merely as an aid to the President.

A number of important rules are laid down by the statute directly: *e. g.*, that against the employment of persons using liquor to excess, that against the employment of more than two members of any family, rules forbidding recommendations by members of Congress, political assessments and contributions, solicitation in offices, etc.

The act itself specifies eight matters for which the rules must provide, and which cover the essential points of the system of competitive examinations and appointment according to merit, and at the same time leaves some flexibility by adding "as nearly as the conditions of good administration will warrant," and by

providing that necessary exceptions shall be set forth in connection with the rules, and the reasons therefor stated in the annual reports. The classification of the service must conform as closely as possible to that provided for in the Revised Statutes.

The rule-making power thus appears carefully circumscribed, and the vital principle of the law is fixed by the statute itself.

The whole matter being one not involving ordinary civil rights, there was no occasion for procedural safeguards in framing rules, and no method is prescribed for making or promulgating the rules.

4. Regulations in Cases of Emergency.

The existence of a special emergency invests regulations of this class with a semi-administrative character, and this in its turn serves to justify the delegation of power (Blue *vs.* Beach, 155 Ind. 121).

The power to make regulations for contagious diseases is perhaps the most common rule-making power in the United States; it is exercised by federal, state and local authorities and extends to diseases of animals as well as of human beings. Legislative practice and judicial construction are equally liberal.

For a particularly full delegation of a power of this class, see Wisconsin Revised Statutes 1408:

"The board shall have power to establish such systems of inspection as in their judgment may be necessary to ascertain the presence of the contagion or infection of Asiatic cholera, diphtheria, scarlet fever, smallpox, leprosy, typhus or ship fever, yellow fever or other dangerous contagious disease—the words dangerous contagious disease as used in this chapter meaning such diseases as the board shall designate as contagious and dangerous to the public health; and any member or duly authorized agent or inspector of said board may enter any building, vessel, railway car or other public vehicle to inspect the same and remove therefrom any person affected by such a disease, and for this purpose may require the person in charge of any vessel or public vehicle, other than a railway car, to stop the same at any place, and may require the conductor of any railway train to stop his train at any station or upon any sidetrack for such time as may be necessary. The board may also, from time to time, make, alter, modify or revoke rules and regulations for guarding against the introduction of any such disease into the state, for the control and suppression thereof within it, for the quarantine and disinfection of persons, localities and things infected or suspected of being

infected by such disease, for the transportation of dead bodies, for the speedy and private interment of the bodies of persons who have died from dangerous contagious disease, for the proper observance of the provisions of sections 4608a and 4608b, for the proper sanitary care of jails, asylums, schoolhouses, hotels and all other public buildings and the premises connected therewith, and, in emergency, may provide those sick with any such disease with necessary medical aid and with temporary hospitals for their accommodation and also for their nurses and attendants. The board may declare any or all of its rules and regulations made in accordance with the provisions of this section to be in force within the whole or any specified part of the state and make them applicable to any vessel, railway car or public vehicle of any kind. Such rules and regulations, if of general application, shall be published in the official state paper; but whenever, in the judgment of the board, it shall be necessary so to do special rules, regulations or orders may be made for any city, village or town without being so published, and the service of copies thereof upon the proper city, village or town officers shall be sufficient notice thereof. Rules, regulations or orders made in accordance herewith, shall, for the time being and until revoked, supersede all local rules, regulations or ordinances that may be in conflict therewith. All health officers, local boards of health, sheriffs, constables, policemen, marshals and other officers and employees shall respect and enforce the rules and regulations made in pursuance hereof in every particular affecting their respective localities and duties. Any person who shall neglect or refuse to obey such rules and regulations or who shall wilfully obstruct or hinder the execution thereof shall be punished for each offense by a fine of not less than $25 nor more than $500, or by imprisonment in the county jail for not more than six months or by both fine and imprisonment. It is the duty of all city, county, town and village officers, of all local boards of health and all officers and persons in charge of all institutions, buildings, vessels and vehicles within this section to co-operate with the state board of health in carrying out these provisions, and if such co-operation be refused or withheld said board may execute its rules and regulations by agents of its own appointment, and all expenses incurred in so doing shall be paid by the county, city, town or village the officers of which have failed to so co-operate and in behalf of which expenses have in consequence thereof been incurred; provided, that such liability for expenses shall not exist if they are incurred for the prevention and control of Asiatic cholera and the state has created a fund for that purpose."

5. Powers of Regulation Given to Boards of Health.

Where a local board of health is at the same time the governing authority of the locality, its rule-making power may be co-extensive with the ordinance-making power of a municipal corporation and therefore cover the entire field of local health conditions. Such a power of regulation is legislative and not administrative.

In some cases local boards of health with appointed members and of a primarily administrative character have likewise exercised wide legislative powers. Thus, comprehensive "sanitary codes" have been enacted by the health department of the city of New York (see Goodnow Municipal Government, p. 166, as to its history) and by the state board of health of Louisiana, and the Sanitary Code of the city of New York has been repeatedly recognized and confirmed by the legislature (Consolidation Act of 1882; Charter of Greater New York, 1901). These are exceptional cases.

The rule-making powers of state boards of health do not generally go beyond the lines indicated by the first four classes above referred to. In Florida and Illinois the power is, however, couched in terms apparently much further reaching. Florida speaks of power to make and enforce rules and regulations necessary for the preservation of the public health of Florida, and in Illinois the state board of health has "authority to make such rules and regulations, and such sanitary investigations, as they may from time to time deem necessary for the preservation or improvement of public health." The Supreme Court of the state, however, has held (Potts *vs.* Breen, 167 Ill. 67), particularly in view of its duty to recommend legislation, that the powers of the board are limited to the proper enforcement of statutes, having reference to emergencies requiring action on the part of the agencies of government to preserve the public health; the validity of a rule requiring vaccination without reference to the existence or menace of smallpox was therefore denied.

This decision is important as demonstrating that vague and sweeping powers of regulation are not looked upon with favor, and that the prevailing more conservative practice of legislation is sound.

The same principle is illustrated in the case of Wyeth *vs.* Thomas, 200 Mass. 474, 86 N. E. 925. The state board of registration in embalming was given power by statute to adopt rules and regulations governing the care and disposition of dead bodies and the business of embalming. The board undertook to make a rule forbidding local authorities to issue permits for the burial of the dead to any persons not being licensed embalmers. The rule was held invalid. It was an act of legislation plainly not within the scope of delegation, and would have been of doubtful validity even if the legislature had made the requirement.

A peculiarly limited power of regulation is found in the English Sale of Food and Drugs Act, 1899, 4, which authorizes the board of agriculture to make regulations for determining what deficiency in normal constituents or what addition of extraneous matter shall for the purpose of the act *raise a presumption until the contrary is proved* that a dairy product is not genuine or injurious to health.

6. Powers of Regulation for Safety and Health in Factories and Work Places.

There are three types of factory laws: one, of which the Illinois Health, Safety and Comfort Act of 1907 is an example, in which the statute itself specifies minutely all sanitary and safety requirements; another, illustrated by the English Factory and Workshop Act, 1901, in which there are many specific requirements, and in addition a subsidiary power of regulation; and a third, illustrated by the Industrial Commission Law of Wisconsin, in which practically all specification of requirements is left to administrative regulations.

The less the principles upon which a matter is to be regulated are capable of scientific ascertainment and demonstration, the more the regulation must be a matter of discretion and policy, and hence the delegation is of legislative rather than of administrative power. The progress of knowledge and science while it enlarges the scope of regulation reduces the scope of discretion, and an enlarged power of administrative regulation is therefore by no means incompatible with an increased security of private right.

The constitutional justification of so wide a delegation as that of the Wisconsin law can only be found in the view that health and safety standards are matters of scientific elaboration or of practical adjustment, in the choice between which no principle is involved, so that a declaration that the standards shall be reasonable constitutes an adequate expression of legislative policy.

Conceding this view, which, however, is not beyond controversy, it remains to be seen whether the system of administrative regulations carries with it the requisite degree of authority and permanence.

For a subsidiary power of regulation, Section 79 of the British Factory and Workshop Act of 1901, may serve as a model:

"Where the Secretary of State is satisfied that any manufacture, machinery, plant, process or description of manual labor, used in factories or workshops, is dangerous or injurious to health or dangerous to life or limb, either generally or in the case of women, children or any other class of persons, he may certify that manufacture, machinery, plant, process or description of manual labor to be dangerous; and thereupon the Secretary of State may, subject to the provisions of this act, make such regulations as appear to him to be reasonably practicable and to meet the necessity of the case."

More elaborate is the provision of the Labor Law of New York, 51 (3), (4) and 52 (1):

"51. *Jurisdiction of Board.*—The board shall have power: (3) to make, alter, amend and repeal rules and regulations for carrying into effect the provisions of this chapter, applying such provisions to specific conditions and prescribing specific means, methods or practices to effectuate such provisions.

"(4) To make, alter, amend or repeal rules and regulations for guarding against and minimizing fire hazards, personal injuries and disease, with respect to (a) the construction, alteration, equipment and maintenance of factories, factory buildings, mercantile establishments and other places to which this chapter is applicable, including the conversion of structures into factories and factory buildings; (b) the arrangement and guarding of machinery and the storing and keeping of property and articles in factories, factory buildings and mercantile establishments; (c) the places where and the methods and operations by which trades and occupations may be conducted and the conduct of employers, employees and other persons in and about factories, factory buildings and mercantile establishments; it being the policy and intent of this chapter that all factories, factory buildings, mercantile establishments and other places to which this

chapter is applicable, shall be so constructed, equipped, arranged, operated and conducted in all respects as to provide reasonable and adequate protection to the lives, health and safety of all persons employed therein and that the said board shall from time to time make such rules and regulations as will effectuate the said policy and intent.

"52. *Rules and Regulations; Industrial Code.*—(1) The rules and regulations adopted by the board pursuant to the provisions of this chapter shall have the force and effect of law and shall be enforced in the same manner as the provisions of this chapter. Such rules and regulations may apply in whole or in part to particular kinds of factories or workshops, or to particular machines, apparatus or articles; or to particular processes, industries, trades or occupations; and they may be limited in their application to factories or workshops to be established, or to machines, apparatus or other articles to be installed or provided in the future."

The following form of subsidiary rule-making power is recommended in a draft outline for a model safety law prepared under the auspices of the National Civic Federation:

"28. *Rules.*—In order to make more effective the foregoing statutory regulations, and in order to carry out their purpose and intent, which is the prevention of accidents, the Board of Safety Experts, upon the request of the (Chief Factory Inspector) and as to the matters referred to in such request and not otherwise, after first giving reasonable public notice and a reasonable opportunity to be heard to all affected thereby, from time to time shall make and from time to time may change or modify general or special rules for any purpose for which rules are explicitly or implicitly authorized in any other section of this chapter and also for the purpose following, to wit:

"(a) To prescribe the specific means, methods or practices to carry out the purpose and intent of any provisions of this chapter.

"(b) To define the application of any provision of this chapter to specific conditions; and to fix and make definite any time, period, space, distance, height, quantity or quality prescribed indefinitely in any provision of this chapter.

"(c) To exclude from the application of any provision of this chapter specific conditions covered by its letter, but not by its purpose and intent.

"(d) To prescribe, upon conditions, alternative methods of complying with any of the provisions of this chapter so as more effectually to carry out its purpose and intent."

The delegation in the Wisconsin law is in very simple and general terms:

"2394-51. The Industrial Commission is vested with the power and jurisdiction to have such supervision of every employment, place of employment and public building in this state as may be necessary adequately to enforce and administer all laws and all lawful orders requiring such employment, place of employment or public building to be safe, and requiring the protection of the life, health, safety and welfare of every employee in such employment or place of employment and frequenter of such place of employment, and the safety of the public or tenants in any such public building.

"2394-52. It shall also be the duty of the Industrial Commission, and it shall have power, jurisdiction and authority:

"(4) To ascertain and fix such reasonable standards and to prescribe, modify and enforce such reasonable orders for the adoption of safety devices, safeguards and other means or methods of protection to be as nearly uniform as possible, as may be necessary to carry out all laws and lawful orders relative to the protection of the life, health, safety and welfare of employees in employments and places of employment or frequenters of places of employment.

"(5) To ascertain, fix and order such reasonable standards, rules or regulations for the construction, repair and maintenance of places of employment and public buildings, as shall render them safe."

For power to make safety regulations in connection with public utilities, see Illinois Public Utilities Law, 57:

"The commission shall have power, after a hearing and upon its own motion or upon complaint, by general or special orders, rules or regulations, or otherwise, to require every public utility to maintain and operate its plant, equipment or other property in such manner as to promote and safeguard the health and safety of its employees, passengers, customers, and the public, and to this end to prescribe, among other things, the installation, use, maintenance and operation of appropriate safety or other devices or appliances, including interlocking and other protective devices at grade crossings or junctions and block or other systems of signalling, to establish uniform or other standards of equipment, and to require the performance of any other act which the health or safety of its employees, passengers, customers or the public may demand."

7. Powers of Regulation in Connection with Railroads and Other Public Utilities.

Very considerable legislative and judicial attention has been given to this matter since the introduction of railroad commissions.

There are to be distinguished three stages or grades of commission powers, the merely advisory or supervisory, the mandatory which is merely negative, and the mandatory which is also positive by way of direction and regulation.

The decision in Interstate Commerce Commission *vs.* Cinc. N. O., etc., R. Co., 167 U. S. 479 (1897), settled the interpretation of certain statutory phrases. A general direction to the commission to execute and enforce the provisions of the act, accompanying a declaration that railroad rates shall be reasonable, enables the Commission merely to entertain complaints in an informal manner (see 15th Annual Report of the Commission for 1901) or at most to set the prosecuting and judicial machinery of the law in motion.

Even a further power to order an offending carrier to cease and desist from his illegal practices was held to be insufficient to support a rate-making power; and this conservative construction brought about the enlarged commission powers of the act of 1906. By this act "the Commission is hereby authorized and empowered to determine and prescribe what will be the just and reasonable individual or joint rate or rates, charge or charges, to be thereafter observed in such case as the maximum to be charged, and what individual or joint classification, regulation, or practice is just, fair and reasonable, to be thereafter followed, and to make an order that the carrier or carriers shall cease and desist from such violation to the extent to which the Commission finds the same to exist, and shall not thereafter publish, demand, or collect any rate or charge for such transportation or transmission in excess of the maximum rate or charge so prescribed, and shall adopt the classification and shall conform to and observe the regulation or practice so prescribed."

More simple is the phrasing of the Public Utilities Act of Illinois which gives the commission power to "determine the just, reasonable or sufficient rates or other charges, classifications, rules, regulations, contracts or practices to be thereafter observed and in force" (41): also "to establish and fix reasonable and sufficient joint rates or other charges or classifications" (42).

The Illinois law moreover gives an important power to standardize service as follows:

"54. The commission shall have power to ascertain, determine and fix for each kind of public utility suitable and convenient

standard commercial units of service, product or commodity, which units shall be lawful units for the purposes of this act; to ascertain, determine and fix adequate and serviceable standards for the measurement of quantity, quality, pressure, initial voltage or other condition pertaining to the performing of its service or to the furnishing of its product or commodity by any public utility, and to prescribe reasonable regulations for examining, measuring and testing such service, product or commodity, and to establish reasonable rules, regulations, specifications and standards to secure the accuracy of all meters and appliances for examining, measuring, or testing such service, product or commodity."

Exhaustive collections of all statutory provisions relating to public utilities have been made by the Department on Regulation of Utilities of the National Civic Federation, and (with special reference to telephone and telegraph companies) by the American Telephone & Telegraph Company (Volume "Commission Laws," Boston, 1914). The National Civic Federation has also prepared a draft of a model public utility law, which seems to have been used considerably in the preparation of the Illinois act.

The powers of regulation regarding rates and service of public utilities are frequently so phrased as to make their exercise quasi-judicial rather than legislative, or corrective rather than normative. That is to say, the initial power remains with the company and the commission acts only on being satisfied of the unreasonableness, inadequacy or illegality of the rate or practice adopted. The power of regulation is thus assimilated to the power to issue orders of individual application; the magnitude of the public utility business obliterating to a certain extent the line between particular orders and general rules.

8. Rules and Regulations "for Carrying Out the Provisions" of an Act.

A rule-making power thus phrased is found in pure food acts (U. S., 1906, 3; Illinois, 1907, 38) and probably in other statutes.

The regulations issued under the Federal Pure Food Law indicate the scope of such power: they confine themselves to explanations, warnings and administrative directions regarding the exercise of official duties or the conduct of official proceedings.

Generally speaking, there is no attempt to prescribe anything

that the law itself does not prescribe (an exception is rule 17 requiring all information which the law requires to appear on the label, to be in English), but in a few cases the regulation undertakes to specify what constitutes misbranding, etc.; such a regulation of course is subject to the judicial interpretation of what the statutory term means. Most regulations are such as the authorities charged with the administration of the act might make simply by virtue of their power to lay down rules for their own action or for the convenience of the public.

The Department of Agriculture has disclaimed for the food inspection decisions issued under its authority any legal force:

"They are issued more in an advisory than in a mandatory spirit. It is clear that if the manufacturers, jobbers and dealers interpret the rules and regulations in the same manner as they are interpreted by the Department, and follow that interpretation in their business transactions, no prosecution will lie against them." (F. I. D. 44, Dec. 4, 1906.)

The phrase "rules and regulations for carrying out the provisions of the act" thus does not in reality mean a great deal. At the same time its vagueness makes it liable to be misunderstood as meaning more than it does mean, and may afford a temptation to issue invalid regulations.

A more specific grant of power is therefore more desirable.

9. Administrative Regulations to Secure the Uniform Exercise of Administrative Discretion.

If a discretion or a power to determine matters which are liable to differences of opinion or judgment is vested in an official or board, respect for precedent and the need of uniformity will in any event in the regular course of administration produce something like a set of rules and principles upon which the discretion will be exercised; there can in consequence be no objection to a statutory direction to frame such rules for the guidance and information of the public.

Since such rules would be very likely to be adopted by successors in office, it is also legitimate to provide that rules so framed shall remain in effect until altered by the same authority. An illustration of a rule-making power of this kind is found in the Illinois Revenue Act 3 in connection with the valuation of the capital stock of companies and associations by the state board of equalization:

"Such board shall adopt such rules and principles for ascertaining the fair cash value of such capital stock as to it may seem equitable and just, and such rules and principles when so adopted if not inconsistent with this act, shall be as binding and of the same effect as if contained in this act, subject, however, to such change, alteration or amendment as may be found from time to time to be necessary by said board."

In meeting the contention that this constituted an invalid delegation of legislative power, the Supreme Court said (Porter *vs.* Rockford R. C., 76 Ill. 561, 586):

"We are unable to perceive that any power is in this respect conferred upon the board which it would not equally have possessed had the statute been silent upon the subject, or that the power given is more than is, by fair implication, conferred upon local assessors, and exercised by them in all cases where they make rational and just assessments of the property within their districts."

So the Federal Reserve Act, 1913, 9, provides:

"The Organization Committee or the Federal Reserve Board shall establish by-laws for the general government of its conduct in acting upon applications made by the state banks and banking associations and trust companies for stock ownership in federal reserve banks."

10. Statutory Provision to be Applied or Not Applied in the Discretion of an Administrative Authority.

This is not in reality a power of regulation, but a delegation of power to determine the going or not going into effect of legislation, either generally or with regard to certain classes of persons, matters or places.

The one day rest in seven law of New York (1914, Ch. 396) thus provides that the law shall not apply "To employees, *if the commissioner of labor in his discretion approves,* engaged in the work of any industrial or manufacturing process necessarily continuous in which the employee is permitted to work more than eight hours in any calendar day."

The Court of Appeals, while sustaining the law in general, expressed strong doubts as to the validity of this provision (Peo. *vs.* Klinck, etc., Co. 108 N. E. 278).

It represents indeed a delegation of legislative discretion of the most pronounced type, and is strongly objectionable by reason

of its failure to indicate any guidance as to the manner in which the discretion is to be exercised.

It is a very different case, if the legislature indicates the conditions under which a statute is to operate and leaves the ascertainment of the existence of those conditions to an administrative authority. This latter kind of delegation has been sustained by the Federal Supreme Court in Field *vs.* Clark, 143 U. S. 649.

The New York Labor Law seems to contain both types of delegation in one subsection: Section 81, subsection 2 requires fans for grinding wheels, except that in case of wet-grinding it is unnecessary to comply with this provision unless required by the rules and regulations of the industrial board—there being no indication of any principle on which the board is to act. The same subsection requires in case of a dust-creating machine a fan to be kept running constantly, except where in the case of wood-working machinery the industrial board shall decide that it is unnecessary for the health and welfare of the operatives—the delegation here being for the purpose of ascertaining a condition or fact.

The British Factory Act of 1901 contains a number of clauses by which the operation waiver or variation of requirements is left to the judgment of the Secretary of State. (See 36, 42, 47-52. 54-56, 58-60.) The statute specifies the classes of concerns with regard to which the special power applies, the nature of the exigency, and the manner and scope of variation. The order of the Secretary, where it relieves of a requirement, may be conditioned on the adoption of special means or provisions (§58).

The power of the Secretary of State can apparently be exercised only with reference to particular classes of establishments, not with regard to particular individual establishments; but provision is made for rules and methods to be observed by each particular concern that desires to avail itself of the special order (notice, registers, etc.; see Section 60). There is also power to rescind these special orders if no longer necessary, or if injurious to health (§59).

11. Administrative Regulations Extending the Scope of an Act, or Varying the Effect of its Provisions.

A power to make regulations of this effect is uncommon in this country; for in permitting a departure from the policy expressed in the act, it plainly delegates a discretion which the legislature itself has indicated to be legislative in character.

Such a power is however found in the Parcels Post Act of 1912, 8, which authorizes the Postmaster-General, subject to the consent of the Interstate Commerce Commission upon investigation, to reform from time to time, the classification, weight limit, rates, zone or zones, or conditions, or either (specified in the act), in order to promote the service to the public or to insure the receipt of revenue from such service adequate to pay the cost thereof.

It will be noted that this power concerns only a branch of the public service, and not common civil rights.

A very recent act of Congress to fix the standard barrel for fruits, vegetables and other dry commodities (enacted March 4, 1915) provides that reasonable variations shall be permitted and tolerance shall be established by rules and regulations made by the Director of the Bureau of Standards and approved by the Secretary of Commerce.

This appears to be an unusual power, and to be framed with objectionable looseness.

In European Workmen's Accident Insurance Laws of European countries, the list of trades to be included is sometimes left to be determined or to be added to by executive proclamation; in Australia the addition may be made pursuant to addresses from both Houses of Parliament.

Powers to extend the scope of the law are found in the (Br.) Factory Act of 1901, Par. 116 (5), and in the (Br.) National Insurance Act, 1911, Par. 103, as follows:

"Par. 116. The Secretary of State, on being satisfied by the report of an inspector that the provisions of this section are applicable to any class of non-textile factories or to any class of workshops, may, if he thinks fit, by special order, apply the provisions of this section to any such class, subject to such modifications as may, in his opinion, be necessary for adapting those provisions to the circumstances of the case. He may also, by any such order, apply those provisions, subject to such modifications as may, in his opinion, be necessary for adapting them to the

circumstances of the case, to any class of persons of whom lists may be required to be kept under the provisions of this act relating to outworkers and to the employers of those persons."

National Insurance Act, 1911, Par. 103:

"If it appears to the board that it is desirable to extend the provisions of this part of this act to workmen in any trade other than an insured trade, or to vary the definition therein, either generally or for any particular insured trade, or any particular branch of any such trade, the board may, with the consent of the Treasury, make, in manner hereinafter provided, a special order extending this part of this act to such workmen or so varying the definition of 'workmen,' as the case may be, either without modification or subject to such modifications of rates of contribution or rates or periods of benefit as may be contained in the order, and, on any such order being made, this part of this act shall, subject to the modifications (if any) contained in the order, apply as if the trade mentioned in the order were an insured trade, or as if the definition of 'workmen' were varied in accordance with the order, as the case may be, and as if the rates of contribution and the rates and periods of benefit provided by this part of this act in respect of such trade:

"*Provided,* That no such order shall be made if the person holding the inquiry in relation to the order reports that the order should not be made, or if the order would, in the opinion of the Treasury, increase the contribution to the unemployment fund out of moneys provided by Parliament to a sum exceeding one million pounds a year before the expiration of three years from the making of the order, and that the rates of contribution mentioned in the order shall not exceed the rates specified in the eighth schedule of this act, and shall be imposed equally as between employers and workmen."

A limited and temporary power to vary provisions of the law, in order to eliminate unforeseen difficulties, is found in the (Br.) National Insurance Act, 1911, Par. 78:

"If any difficulty arises with respect to the constitution of insurance committees, or the advisory committee, or otherwise in bringing into operation this part of this act, the insurance commissioners, with the consent of the Treasury, may by orders make any appointment and do anything which appears to them necessary or expedient for the establishment of such committees or for bringing this part of this act into operation, and any such order may modify the provisions of this act so far as may appear necessary or expedient for carrying the order into effect; *provided,* that the insurance commissioner shall not exercise the powers conferred by this section after the first day of January, nineteen hundred and fourteen."

12. Act Whether Effective Without the Aid of the Administrative Regulation.

It has been held in a number of cases that where a duty is imposed subject to an administrative direction or regulation, the duty is not conditioned upon administrative action, but the act either merely gives a right to direct, or makes it the duty of the person charged to obtain the direction (111 U. S. 228, 240, 241; 78 N. Y. 310; 49 Ohio St. 213; 192 Ill. 601).

Under such a ruling there is no need of special provision to enforce the issue of the regulation in order that the statute may become operative.

If, on the other hand, a right is conferred subject to an administrative regulation, the right is generally dependent upon the issue of the regulation (173 U. S. 65).

Where the statute is inoperative without the administrative regulation, it is in some cases possible to frame provisions in such a manner that the rule-making authority will be practically compelled to issue the regulation; so, *e. g.*, in the Civil Service Act, which forbids after a period of time any appointments to be made except in pursuance of the regulations to be issued.

There is no general method of handling this difficulty, but the draftsman, bearing the point in mind, will deal with it according to circumstances.

Where the operation of the act depends upon the issue of a regulation, the character of the regulation will determine the operation of the act, though the regulation fall short of the requirements of the act. Thus the Oregon Minimum Wage Law of 1913 sets a minimum wage standard (adequate to maintain the worker in health); yet no wage can be fixed that has not been determined upon by a two-thirds vote of a wage conference, and if the rate recommended falls below the standard, there is no statutory power to raise it. This is a case of disharmony between two provisions of a statute, with the result that the more specific provision will prevail.

III. STATUTORY PROVISIONS IN CONNECTION WITH THE GRANT OF RULE MAKING POWERS.

1. The Statute Should as Far as Practicable Indicate the Principles Which are to be Observed in Framing Rules and Regulations.

This may be done either by incorporating these principles into the statute as substantive provisions to which the rule-making power is necessarily subordinate, or by prescribing that the regulations must incorporate the principles.

The difference is one of form merely, for in either case the regulation which fails to conform to the prescribed principle will be invalid. In either of the two forms the statute may, however, indicate that the observance of the principles is merely a direction, and that the validity of the regulation is not to be affected by non-conformity to it; but such legislative purpose should be made clear by appropriate words ("as far as practicable," etc.).

The Civil Service Act of the United States illustrates the incorporation of guiding principles in both forms, as shown above.

The substance of the guiding principles varies with the subject matter of legislation.

The German Trade Code prescribes such principles only for special orders relating to arrangements required to be made in work places for the benefit of workers; a proper time for compliance must be given if the danger is not urgent, and as to existing establishments only such arrangements may be required as will either remove material defects threatening life, health or morals, or such as can be made without disproportionate expense (Trade Code, 120).

2. Provisions for Procedure to be Followed in Adopting Regulations.

Such provisions are unusual in American legislation, and are not called for unless the regulation affects private rights.

The Wisconsin Industrial Commission Law allows (2394-57) a petition for a hearing on the reasonableness of an order, after the same has been promulgated, and the hearing need not be granted if the issues raised by the petition have theretofore been adequately considered. This is obviously not as beneficial to the parties affected as a preliminary hearing would be.

A full provision for notice and hearing in connection with general regulations is found in the Bristol Factory Act of 1901, which appears to have become a sort of a model in England, being incorporated by reference in the National Insurance Act of 1911 (Par. 113).

The principal points relate to notice and deposit of draft regulation, opportunity for objection, possible substitution of amended draft, reference for public inquiry, right to be heard, right to administer oaths, power to make rules for the inquiry and all preliminary and incidental matters.

The provisions in full are as follows:

"*Factory and Workshop Act, 1901, Par. 80.*—(1) Before the Secretary of State makes any regulations under this act, he shall publish, in such manner as he may think best adapted for informing persons affected, notice of the proposal to make the regulations and of the place where copies of the draft regulations may be obtained and of the time (which shall be not less than 21 days) within which any objection made with respect to the draft regulations by or on behalf of persons affected must be sent to the Secretary of State.

"2. Every objection must be in writing and state

"(a) The draft regulations or portions of draft regulations objected to;

"(b) The specific grounds of objection; and

"(c) The omissions, additions or modifications asked for.

"3. The Secretary of State shall consider any objection made by or on behalf of any persons appearing to him to be affected which is sent to him within the required time, and he may, if he thinks fit, amend the draft regulation, and shall then cause the amended draft to be dealt with in like manner as an original draft.

"4. Where the Secretary of State does not amend or withdraw any draft regulations to which any objection has been made, then (unless the objection is either withdrawn or appears to him to be frivolous) he shall, before making the regulations, direct an inquiry to be held in the manner hereinafter provided."

"Par. 81. 1. The Secretary of State may appoint a competent person to hold an inquiry with regard to any draft regulation, and to report to him thereon.

"2. The inquiry shall be held in public, and the chief inspector and any objector and any person who, in the opinion of the person holding the inquiy, is affected by the draft regulations, may appear at the inquiry either in person or by counsel, solicitor or agent.

"3. The witnesses on the inquiry may, if the person holding it thinks fit, be examined on oath.

"4. Subject as aforesaid, the inquiry and all proceedings preliminary and incidental thereto shall be conducted in accordance with rules made by the Secretary of State.

"5. The fee to be paid to the person holding the inquiry shall be such as the Secretary of State may direct and shall be deemed to be part of the expenses of the Secretary of State in the execution of this act."

For a briefer form where the consent of the majority of the parties affected is required, see Shop Hours Act, 1904 (Br.), Par. 3 (1):

"Whenever a local authority are satisfied that a *prima facie* case is made out for making a closing order, the authority shall give public notice, in the prescribed manner and in the prescribed form (*i. e.*, prescribed by regulation made by the central authority (section 7 of act)), of their intention to make an order, specifying therein a period (not being less than the prescribed period) within which objections may be made to the making of the proposed order and if, after taking into consideration any objections they may have received, the local authority are satisfied that it is expedient to make the order and that the occupiers of at least two-thirds of the shops in number to be affected by the order approve the order, they may make the order."

The Scotch Public Health Act, 1897, 185, requires that by-laws shall, before application for confirmation by the Local Government Board, be kept for one month at least for inspection, that persons aggrieved may forward objections to the board who shall consider the same, and that any rate payer may for a specified fee obtain a copy of the proposed by-laws.

This, it will be noted, omits any provision for a public inquiry. The British practice of legislation is, in the case of regulations or by-laws issued by a local authority, to require confirmation by some central government board or secretary of state. This is not the American practice.

On the other hand, we find in America the right to appeal to a court to set aside an administrative regulation. While in case of a statute such an appeal would involve an unconstitutional exercise of power on the part of the court (Muskrat *vs.* U. S. 219; U. S. 346), the practice of reviewing municipal ordinances on *certiorari* is well established in New Jersey, and it is difficult to see why the acknowledged supervisory power of courts over inferior jurisdictions (Yick W. O. *vs.* U. S. 118; U. S. 356) should not be exercised over administrative regulations on the ground

that they are unreasonable and therefore illegal. The court would not review the question of expediency.

The following is the provision of the Wisconsin Industrial Commission Law (2394-68) permitting an appeal from a commission order to a court:

"2394-68. 1. Any employer, owner or other person in interest being dissatisfied with any order of the commission may commence an action in the circuit court for Dane County against the commission as defendant to vacate and set aside any such order on the ground that the order is unlawful, or that any such order is unreasonable, in which action the complaint shall be served with the summons.

"2. The answer of the commission to the complaint shall be served and filed within 10 days after service of the complaint, whereupon said action shall be at issue and stand ready for trial upon 10 days' notice to either party.

"3. All such actions shall have precedence over any civil cause of a different nature pending in such court, and the circuit court shall always be deemed open for the trial thereof, and the same shall be tried and determined as other civil actions.

"4. No injunction shall issue suspending or staying any order of the commission, except upon application to the circuit court or the presiding judge thereof, notice to the commission, and hearing."

A peculiar method of securing judicial reviewability is to make the regulation only presumptive evidence of its being the correct expression of the statutory principle. See volume on "Commission Laws," published by the American Telegraph and Telephone Company, 1914, pp. 567-573. Also English Sale of Food Act, 1899, 4, empowering the Board of Agriculture to make regulations for determining what deficiencies or additions shall raise a presumption until the contrary is proved that the milk (etc.) is not genuine or is injurious to health.

The provision for procedural safeguards in connection with the adoption of administrative regulations ensures the development and observance of definite principles in the exercise of the rule-making power and thereby tends to remove the constitutional objection that the legislature has delegated the fulness of its own discretion.

Apart from this it is desirable that in the enactment of regulations there should be something corresponding to the practices and requirements which constitutional experience has developed in connection with the enactment of statutes.

The quasi-judicial character of the administrative regulation may be further emphasized by making it a jurisdictional prerequisite that there shall be some condition requiring relief. This indicates that the power exercised is corrective rather than normative, and the primary control remains free from official dictation, whereas it is competent for the sovereign legislative power to establish advanced standards as well as to correct shortcomings.

The power of the Interstate Commerce Commission to fix rates is clearly corrective in this sense, for it is exercised only upon a complaint and a showing of unreasonable or discriminatory rates; the same is true of the power of minimum wage commissions. The legislative imposition of a two-cent passenger fare, or of an eight-hour day marks the contrast. In the former cases the primary right of regulation remains with the private owner. The power of regulation under the Factory Law of 1901 stands midway; it can be exercised only where danger to health, life or limb exists and is certified by the Secretary of State (79 of act), but such danger does not necessarily indicate a species of wrongdoing on the part of the person carrying on the business.

The corrective character of the regulation implies the existence of some antecedent standard below which some existing practice falls; and provisions for hearing or appeal will inevitably lead in course of time to some authoritative formulation and definition of that standard as a basis for and distinct from the terms of the remedial regulation. Such statutory terms as "reasonable," "just," "safe," "sanitary," etc., will thus be given a more definite content than they could have possibly had in the minds of the legislature.

The corrective character of the regulation may be emphasized by a statutory requirement of a complaint as a basis for the administrative action. However, as in the British Factory Act, the finding of the defective condition may be on the initiative of the administrative authority himself; and the appointment of special agents, inspectors, etc., usually serves the purpose of making administrative action independent of private complaints. In labor legislation, the requirement of a formal complaint by a party aggrieved would tend to nullify the statute since it will be difficult to induce dependent employees to come forward with charges.

3. The Rule-Making Power Should be Conferred as a Continuing Power.

This is sufficiently indicated by such terms as "from time to time make, alter and repeal." However, a simple power to make regulations will be construed as a continuing power (U. S. *vs.* Eliason, 16 Pet. 291, 302: "The power to establish implies, necessarily, the power to modify or repeal, or to create anew").

In the absence of a distinct provision, any change would seem to require the same procedural safeguards as the original enactment. The statutes are generally silent upon this point. It may deserve consideration whether the statute may not in the interest of flexibility authorize some relaxation. The Interstate Commerce Act, Par. 16, says: "The Commission shall be authorized to suspend or modify its orders upon such notice and in such manner as it shall deem proper." Such power should, however, be granted only in exceptional cases.

4. In Appropriate Cases there Should be Express Authority to Adopt Different Regulations for Different Conditions.

This is done with regard to by-laws by the Scotch Public Health Act, 1897, Par. 181: "In making by-laws as to buildings, the local authority shall have regard to the special circumstances of their district *or the part thereof to which such by-laws relate.*"

The British Factory Act, 1901, Par. 82, authorizes regulations to be made to apply to all the factories or workshops certified to be dangerous or to any specified class thereof.

In some cases, on the other hand, it may be proper to indicate clearly that the terms to be laid down by regulations shall be equal under equal conditions, so particularly where public facilities are to be placed at the service of private persons under rules and regulations to be made by the appropriate authorities.

Powers of regulation are quite commonly conferred in the ambiguous form that the rule shall or may be made to apply to "any" specified condition, establishment, etc. This leaves it doubtful whether the power was intended to be exercised with reference to any one particular concern or only with reference to classes of business. A power of individual discrimination is a

very much more incisive power than one exercisable only with regard to a class. This point should not be left in doubt, and the power should clearly be made one of general or class regulation.

5. The Statute Should Require the Regulation to Indicate Under the Authority of What Statute it is Issued.

The practice is voluntarily observed by some branches of the federal government (*e. g.*, Board of General Appraisers), but not by others (*e. g.*, Income Tax Regulations).

6. The Statute Should Contain Some Provision Regarding the Time When a Regulation is to Take Effect.

The provision may fix a normal period to elapse between promulgation of the regulation and its taking effect, which may be varied by the terms of the regulation itself.

In view of the decision in Lapeyre *vs.* U. S. 17 Wall. 191, it may be proper to provide that the regulation shall in no event take place until its promulgation, if it affects any private rights. Factory Act, 1901, 126: "Shall come into operation at the date of its publication or at any later date mentioned in the order."

The Interstate Commerce Act, 15, provides that all orders of the Commission, except orders for the payment of money, shall take effect within such reasonable time, not less than 30 days, as shall be prescribed in the order of the Commission.

If it is deemed desirable to provide for immediately effective emergency regulations, a model may be found in the Rules Publication Act, 1893 (Br.), Par. 2: "Where a rule-making authority certifies that on account of urgency or any special reason any rule should come into immediate operation, it shall be lawful for such authority to make any such rules to come into operation forthwith, as provisional rules, but such provisional rules shall only continue in force until rules have been made in accordance with the foregoing provisions of this act."

7. Period During Which Regulation is to Remain in Effect.

The Interstate Commerce Act, Par. 15, also provides that commission orders shall continue in force for such period of time, not exceeding two years, as shall be prescribed in the order of the Commission.

Such a provision is unusual.

However, according to its very nature and the purpose of delegation, an administrative regulation is presumably not intended to be as permanent as a statute. For a considerable period it was the practice of English legislation to make even statutes on their first enactment temporary, and to make them permanent only after they had been approved by experience.

A similar practice was followed in New York in the early part of the Nineteenth Century with regard to municipal ordinances, which were to be operative for only one year.

Considerable inconvenience may result from the limited duration of a regulation unless care is taken that in due time the regulation is renewed, and in any event there should be a simplified procedure for renewal as compared with the original adoption.

The less permanent character of regulations might be recognized by providing that at stated intervals (5 or 10 years) they shall be republished and revised, and that upon such revision disused regulations shall be dropped.

8. Promulgation and Publication.

A direction for publication is desirable, and should be made essential where a penalty is attached to the violation of the regulation; see, *e. g.*, U. S. Quarantine Law, February 15, 1893, 3.

The mode of publication may be left to the discretion of the rule-making authority.

Thus Factory Act, 1901 (Br.), Par. 126: The order..... shall be published in such manner as the Secretary of State thinks best adapted for the information of all persons concerned.

Such a provision, which is made mandatory by the further provision that the regulation shall not be operative before publication, may be preferable to prescribing the mode of publication in the statute itself.

Further provision (not affecting the validity of the regulation) should be made for the printing and distribution of regulations in convenient form (see Scotch Public Health Act, 186).

9. Provision for Proving Regulation in Court.

It is uncommon to provide that regulations shall be judicially noticed; such a provision is, however, found in the Factory Act, 901 (Br.), 86 (6).

When the regulation has been printed, the following provision will facilitate its proof:

"When printed in book or pamphlet form, and purporting to be published by authority of ....., such book or pamphlet shall, unless the contrary be shown, be received as evidence of the promulgation and publication of the regulation, as of the dates mentioned in such book or pamphlet." (Chicago Charter Act, 1907, 4-28.)

If the regulation has not been printed, the following provision will facilitate proof:

"A copy of the regulation purporting to be signed by the clerk of ..... and to be sealed by the seal of ..... shall, unless the contrary be shown, be received as evidence of the making and the publication thereof, as of the dates mentioned therein, without proof of the official character or signature of the person signing the same."

10. Penalties.

A general clause imposing penalties for the violation of a statutes does not cover violations of an administrative regulation made thereunder (U. S. *vs.* Eaton, 144 U. S. 677) unless the statute provides—a provision neither common nor desirable—that regulations made thereunder shall in every respect have the same effect as the law itself. Nor, it seems, is the violation of an administrative regulation punishable at common law; 70 N. Y. 530. As to orders of justices of peace, see R. *vs.* Robinson, 2 Burr. 739, 805; of an order of the King in Council, R. *vs.* Harris, 2 Leach 549, 4 T. R. 202. There should therefore be a penalty for acts done in contravention of a regulation or for failure to comply with it. To allow the rule-making authority to prescribe penalties, is a common practice in the case of municipal ordinances, but not in the case of administrative regulations.

There is no general provision in any American penal code (as there is in the French Penal Code §471, No. 5) making disobedience to any administrative rule or regulation whatever, lawfully made, a misdemeanor.

There is no objection to the statutory imposition of a penalty for the violation of an administrative regulation on the supposed ground that the legislature affixes a penalty to an unspecified act (130 Iowa 333).

If an administrative regulation is given the effect of a statute, the consequence will be that the civil effects of non-compliance with a statute will obtain (liability for injury resulting from non-compliance, nullity of contracts made in disregard of the regulation, etc.). Considering that administrative regulations do not as certainly incorporate ruling standards of public policy as statutes do, such a consequence may work hardships and go beyond the presumable legislative intent.

It may be desirable to provide that no penalty (or liability) shall be incurred by reason of any act or omission which is in accordance with any regulation issued by the rule-making authority, although such regulation may, subsequent to the act or omission, be declared invalid. See, *e. g.*, National Insurance Act, 1911 (Br.), §692, adding to a penalty provision: "Provided that no person shall be liable to any penalty in respect of any matter if he has acted in conformity with any decision in respect thereto by the insurance commissioners," etc.

APPENDIX B.

TENTATIVE TEXT OF MANUAL FOR LEGISLATIVE DRAFTING.

TOPIC 38. PENALTIES.

1. Introduction.

Recent legislation in this country discloses a commendable tendency to provide for its enforcement through administrative education of and co-operation with the persons affected instead of relying upon the fear of prosecution for its violation as the sole stimulus to compliance.

In some instances discretionary power to extend the time for compliance with a statutory requirement has been conferred upon an administrative board or commission. Such a provision gives greater opportunity for the use of co-operative methods of enforcement and if not abused tends to mitigate the hardship frequently involved in strict compliance with the letter of regulatory legislation. For an example, see the Federal Car Coupling Act (United States Stats. L, Vol. 36, 238).

The fact remains, nevertheless, that it is the potential power of the penalty or other means of compelling compliance or punishing violation that invests with authority those upon whom is imposed the duty of enforcement, and insures respectful attention and obedience to their orders and suggestions. The importance of the penalty cannot be measured by the frequency with which it is imposed. Indeed, the necessity for its use as a means of enforcement tends to vary almost in inverse ratio to its effectiveness.

The term "penalty" is used throughout this topic in its broader sense of punishment of any sort, from forfeiture of money to imprisonment or death; but the scope of the topic is limited to the consideration of drafting problems. The comparative desirability of various ways and means of securing the most effectual enforcement of statutes, including such modified forms of penalties as condemnation, abatement, avoidance of contracts, or forfeiture of licenses and charters, are discussed only incidentally.

The obvious importance of the penalty suggests the need for careful phraseology of its provisions, but the difficulties of the drafter of such provisions are greatly increased by the fact that his work must stand not only the tests applied to all statutes, but also the much more rigorous scrutiny under the rule of strict construction which the courts apply to penal statutes.

2. Amount of Penalty.

A full discussion of the considerations which go to determine the amount or size of a particular penalty is beyond the scope of this report. There is, however, a broad principle which determines the limits within which should fall the amount of the

penalty for the violation of any legislative mandate. The maximum should exceed by a sufficient margin any possible advantage which might accrue to the offender from a violation of the law, and should not be so low as to permit its being looked upon as a mere license or price for the privilege of violation. On the other hand, the minimum, if any, should not be so high as to be under any circumstances incommensurate with the gravity of the offense, thus offering a strong inducement to a court or jury to seize upon a possibly insufficient justification for finding in favor of a defendant.

In some foreign countries the minimum penalties provided for minor offenses and violations of police regulations are smaller in amount than is common in this country. Under the Belgian Penal Code the fine for a simple infraction is from 1 to 25 francs and for a crime or misdemeanor is from a minimum of 26 francs. Under the draft of the Japanese Revised Penal Code the penalty is 1 yen ($1) and upwards, and the police fine is from 10 sen (1 sen equal $\frac{1}{2}$ of a cent) to 30 yen inclusive.

If the amount of the penalty is or may, through increase or accumulation, become very large, the constitutional guarantee of due process of law must be kept in mind. The Supreme Court of the United States has held that there is an unconstitutional denial of due process if the right to an adequate judicial review can be exercised only at the risk of having to pay penalties so great that it is better to yield to orders or requirements of uncertain validity than to ask the protection of the law. (*Ex parte* Young, 209 U. S. 123; Wadley Southern Railroad *vs.* Georgia, 235 U. S. 651.)

An unusual method of fixing the amount of a criminal penalty and one which might prove practical in many cases is suggested in Chapter 114 of the Mississippi Laws of 1914 which provides that the exercise of any privilege taxed by the state, without paying a required tax, shall be punished by a fine of not less than twice nor more than five times the amount of the tax.

3. Fixed or Flexible Penalty.

The advantages of a flexible over a fixed penalty are obvious. The legislator can take into consideration only abstract culpability, and only a person familiar with the circumstances of each

particular case is in a position to know the possible modifying or extenuating circumstances of that case and to make the most advantageous use of such knowledge in effecting the ultimate purposes of the law. In the Holland Code of 1881 the penalty is fixed only as to its maximum, and in France there are few provisions fixing a minimum penalty.

The very advantage of the flexible penalty, viz., variation of its amount under circumstances of varying culpability, necessitates, however, a determination by some one as to its amount in each case. In the case of the criminal penalty the drafter will find no need to provide for such a determination because criminal procedure is well adapted to the administration of flexible penalties, and it is within the well-recognized powers of the judge to fix the amount of such a penalty.

Civil procedure, however, affords no adequate means for the determination of the exact amount of the penalty in a given case although statutes are not infrequently enacted which provide for a civil penalty, flexible in amount (*e. g.,* General Statutes of Kansas, 1889, Par. 1343; New York Agricultural Law, Sec. 52, Laws of 1901, Ch. 656; Wisconsin Laws, 1911, Ch. 485, Sec. 2394-70). In Wisconsin a civil suit is brought for the maximum amount and on trial the court determines in its discretion the amount to be recovered. Usually, however, civil courts possess no such inherent power. In a case arising under the New York statute above cited, which provides a forfeiture of not less than twenty-five dollars, nor more than one hundred dollars, for its violation, the court overruled the claim that the section only authorized a criminal procedure (which was evidently based on the provision for a flexible penalty), and held that the fact that no provision is made as to who shall determine the amount of the sum to be forfeited, "would seem in no way to preclude the recovery of the smaller sum mentioned in the statute." (People *vs.* Bremer, 69 N. Y. App. Div. 14.)

If a flexible civil penalty is found advisable, the means for the determination of its amount must be thoroughly considered. The most obvious alternatives are either to leave to the prosecuting attorney or other officer charged with its administration the determination of the amount by bringing an action for an amount within the maximum and minimum limits fixed by the statute,

or to expressly confer upon the court having jurisdiction of the action the power to determine the amount in much the same manner as a criminal court imposes a sentence. Neither of these alternatives, however, is entirely satisfactory. The New York case above cited suggests the possibility that a court might not sustain such an action for more than the minimum amount, and an even more serious objection to the first alternative is that one of the principal advantages of a flexible penalty—that of its ready adaptability to the varying circumstances of each case, the most effective exercise of which calls for complete impartiality—may be defeated if the determination of the amount is left to the prosecutor. On the other hand, to confer upon a civil court the power to determine the amount may involve a radical change in our jurisprudence which deserves serious consideration. It is possible that a precedent for such a provision is found in New Jersey, Compiled Statutes, 1910, title "Health," Section 51, but the provisions of section 40 of the same title, relating to the form of prosecution for the recovery of the penalty, do not indicate with absolute certainty whether the action is a civil or a criminal one.

Where an offense is of a kind that may be committed by either a person or a corporation and the punishment includes imprisonment, the amount of the fine should be made sufficiently flexible to permit the court to impose upon a corporate offender a fine commensurate with the imprisonment to which an individual may be sentenced. It is hardly necessary, however, to add such a proviso as is found in section 10 of the Act to Regulate Commerce "that the penalty of imprisonment shall not apply to artificial persons."

4. Increased Penalty for Second and Subsequent Offenses.

The principle of increasing the penalty for violations repeated after a penalty has once been incurred is well established. Its justification is found in the evident insufficiency of their warning already given; the contempt of the offender in persisting in violation shows the need of greater severity. Many problems are involved, however, in providing an effective system of increasing penalties for successive violations.

What constitutes a "second" or "subsequent" offense? Is it a second "violation" or a second "conviction"? It has been held that the manifest purpose of such provisions is to increase the penalty for offenses because of persistence in violating the law and that the term "second offense" must mean "second conviction" (Carey *vs.* State, 70 Ohio St. 121). The term "offense" has been so generally used and interpreted in this sense of "conviction" that it has probably acquired that technical meaning for the purpose of such provisions; but the careful drafter will leave no room for doubt as to the nature of the previous violation which is to justify a future increase in the penalty. In addition to the possibility of doubt as to whether offense means conviction, distinctions might also be drawn and are in fact drawn in some European countries between a conviction, followed by sentence and execution of the sentence, and a conviction without sentence or a conviction and sentence without execution.

When a penalty provision is applicable only to a single kind of action care in the description of what constitutes a "first offense" will suffice; but where the penalty provision applies to acts of different kinds, as, for example, a general penalty for violation of any provision of a code or general law, the question arises whether conviction for violation of one provision makes a subsequent conviction for violation of another provision a "second offense." Thus, under a penalty provision in the New York Penal Law for the punishment of violations of any provision of specified articles of the Labor Law, it was on an indictment for a third offense held sufficient to show that the defendant had been previously convicted of violations of other provisions of the same *article* and that it was not necessary to show that the previous convictions were for the identical offense (People *vs.* Butler, 154 N. Y. App. Div.). In some European countries where crimes are divided into three classes, instead of into two as in our own, it is provided that only a crime following an equally or more serious crime shall entail an increase of penalty. In other foreign countries an increased penalty is applied only where the offenses are identical and not where they are merely in the same or specified classes. Recent foreign codes also show a tendency to impose the increased penalty only when the subsequent offense

occurs within a stated period of five or ten years following the prior offense.

It is only necessary to state these possibilities to emphasize the necessity for an exact statement of legislative intent. The draftsman should not fail to obtain specific instructions on these points and to take care that he gives accurate expression thereto, which he may do in some such form as is suggested in the following illustrative provisions and in those found at the end of this report. "A conviction shall be deemed a conviction for a subsequent offense if prior to the violation constituting the offense the same person has been convicted for a violation of any provisions of this act" or "a conviction shall be deemed a conviction for a subsequent offense only if prior to the violation constituting the offense the same person has been convicted for a violation of the same provision of this act."

The advisability of making the penalties for first, second and subsequent offenses overlap each other, presents an important consideration, especially where there is one penalty provision for the punishment of a number of different forms of violation. When a penalty applies to numerous violations of different sorts and of varying degrees of seriousness, it frequently happens that a first offense of one sort may prove much more culpable than a second offense of another sort and there is no reason in so limiting the discretion of the judge as to prevent his taking such matters into consideration. Thus, a first offense might be punished by a fine of not less than $20, nor more than $100, and a second offense by a fine of not less than $50 nor more than $200, or either the maximum or minimum limit in each case might be omitted if deemed advisable.

Where the penalty is made to vary for several classes of successive offenses as first, second, third, etc., care must be taken to avoid such description of the last class as might leave subsequent offenses unpunished; *e. g.,* section 1275 of the New York Penal Law, providing penalties for violation of the labor law after specifying a penalty for first and second offenses, proceeds—"for a third offense, by a fine of not less than $250 or by imprisonment, etc.," without indicating any punishment for a fourth or subsequent violation. There should be inserted in the description of the class subject to the maximum penalty, some such word as "subsequent" or "succeeding"; *e. g.,* in the statute just quoted, the language should have been "a third or subsequent offense."

5. CUMULATIVE PENALTIES.

In addition to, or as a substitute for, increased penalties for subsequent violations after a penalty has been imposed for a first violation, the legislature may want to impose a cumulative penalty for several distinct violations or for a continuing violation arising from a course of action or from a condition maintained in defiance of the statute. The term "cumulative penalty" is here used to indicate a multiple or aggregate penalty computed by multiplying the penalty prescribed for one offense by the number of separate offenses.

The "cumulative penalty" involves two principal problems: (1) whether the alleged offense constitutes one or several violations of the statute, *i. e.* whether the offense described by the statute is, in the language of the courts, continuing or separate, and (2) whether, admitting that there have been several distinct violations, there can be a recovery of but one penalty or of that penalty cumulated by multiplying it by the number of distinct offenses.

Whether the offense is continuing or separate, and hence whether one or several penalties have been incurred prior to a given time, depends entirely upon the language of the statute. The legislature has the power to specify definitely what constitutes a violation of the provisions of a statute, and it may provide that each such violation shall incur a separate penalty and that such penalty shall be cumulative. Though possessing this power the legislature frequently fails to indicate precisely what constitutes a violation or when an offense is completed for the purpose of incurring the penalty, and this failure gives rise to difficult questions of interpretation as indicated in the following cases:

A statute provided that no person shall do or exercise any worldly labor, business or work on the Lord's day, and imposed a penalty of five shillings for each offense. On appeal by a baker convicted by four separate convictions for selling four loaves of bread on the same day, Lord Mansfield held that the latter three convictions were invalid, that the offender was exercising his ordinary trade, that it was but one entire offense even though he continued baking from morning till night, and that repeated offenses were not the object which the legislature had in view, but solely the punishment of a man exercising his ordinary trade on Sunday. (Crepps *vs.* Durden, 2 Cowper 640.)

A statute prohibited cohabitation by any male person with more than one woman. Defendant was convicted on three indictments charging unlawful cohabitation during each of three separate years. Held that cohabitation contrary to the statute was a single continuous offense and not an offense consisting of isolated acts, and that in the absence of express provision in the statute the offense could not be so divided as to support separate indictments for each year. The court said that such an offense "can be committed but once for the purpose of indictment or prosecution prior to the time the prosecution is instituted." (*In re* Snow 120 U. S. 274.)

A statute provided that any person who, in pursuance of a scheme to defraud, places any letter in any post office, shall be punishable by fine or imprisonment for each offense. Held that the act forbids not the general use of the post office for the purpose of carrying out a fraudulent scheme, but the putting a letter in the post office in furtherance of such scheme. Therefore, each letter so deposited constituted a separate and distinct violation of the act. (*In re* Henry, 123 U. S. 372.)

A statute forbade confinement of cattle during transportation for a period longer than 36 hours without unloading them for rest, water and feeding; and provided that "for every such failure" the transporting company should be liable to a civil penalty. Held that penalties for violation of this act should not be measured by the number of cattle or of cars, but that a separate offense was committed as to each lot of cattle shipped simultaneously when the maximum period expired as to each such lot regardless of the number of shippers, trains or cars. (B. & O. R. R. *vs.* U. S., 220 U. S. 94.)

An act made a carrier who permits "any employee" to remain on duty for a longer consecutive time than that specified, liable for a penalty "for each and every violation." Held that the wrongful act was keeping an employee at work overtime, that that act was distinct as to each employee so kept, and that a separate penalty was recoverable in the case of each of several employees kept beyond the proper time by the same delay of a train. (M. K. & T. R. R. *vs.* U. S., 231 U. S. 112.)

A statute made it a misdemeanor to receive any rebate in respect to the transportation of any property in interstate com-

merce. Defendant was convicted upon 1462 counts of an indictment, each charging it with receiving a concession on the transportation of a carload lot. Many carloads constituted only a part of a single shipment, and some single orders filled six or eight cars. The Circuit Court of Appeals reversed the judgment and held that the gist of the offense is the acceptance of the concession irrespective of whether the property involved was carloads, trainloads or pounds, that the offense was not consummated until the transaction was completed and that the offense of accepting the concession is the transaction that the given rebate consummates—not the units of mere measurement of the physical thing transported—but the transaction whereby the shipper, for the thing shipped, no matter how great or how little its quantity, received a rate different from the usual rate. (Standard Oil Company *vs.* U. S., 164 Fed. 376.)

A statute imposed a penalty for "any refusal" by an officer of a corporation to exhibit the stock book to a stockholder. Held that although the plaintiff had been forced to repeat his request for two or three consecutive days, there had been but one demand and one refusal, and that but one penalty could be recovered. (Cox *vs.* Paul, 175 N. Y. 328.)

A statute imposed a penalty on a railroad company for compelling colored persons to ride in a particular car. Held that the exclusion from a car of the plaintiff and his wife at the same time was a single act and that a separate penalty could not be recovered by each. (Central R. R. *vs.* Green, 86 Pa. 427.)

A statute provided that no person shall sell or offer for sale or have in his possession with intent to sell, any oleomargarine. A judgment for two violations based on a sale and a subsequent exposure for sale on the same day was reversed on the ground that it is not the policy of the law to multiply penalties, and the defendant should not be punished both for exposing for sale and selling on the same day when as here there appears to be a single transaction even though each act in itself would have been a complete offense and an exposure or selling on a separate day would have constituted another and complete offense. (Commonwealth *vs.* Sherly, 152 Pa. 170.)

A penalty was imposed "for every such offense" and the offense was described in the antecedent words of the section thus

"shall collect or demand any greater rate or prices for passing over said bridge than what is prescribed in the list of tolls put up at the gate." Held that it was the act of collecting unlawful toll which constituted the offense, so that although there were a number of passengers in a vehicle, the collection of the unlawful toll for all of them was a single act and constituted but one offense. (Porter *vs.* Dawson Bridge Co., 157 Pa. 367.)

An act imposed a penalty on any life insurance company "which shall transact its business in this state in violation of the provisions of this act." Held that the transaction of business was one continuing offense and that the statute did not authorize a penalty for every act which evidenced that the business was being conducted in violation of law. (People *vs.* Life Endowment Co., 143 Ill. App. 517.)

An act required every railroad company to place in each station a blackboard upon which it should cause to be written the fact whether each passenger train was on time or not, and provided a penalty "for each violation." An action was brought to recover 1434 penalties for failure to schedule that number of trains. Held that only a single penalty could be recovered. (State *vs.* C. C. C. and St. L. R. R., 8 O. C. C. R. 604.)

The preceding cases selected from various jurisdictions illustrate the importance and the difficulty of specifying precisely what constitutes a violation for which a cumulative penalty is to be imposed. That the drafter must also take into consideration the attitude of the courts toward such penalties is emphatically illustrated by the New York cases which indicate an extreme of judicial unwillingness to give effect to cumulative penalty provisions. The New York courts have held that cumulative penalties will not be imposed unless the legislature states in so many words its intention to impose such penalties; the provision that a particular penalty shall be imposed for "every violation" or "for any refusal" has been held insufficient to support a judgment for a cumulative penalty. If the drafter of a provision intended to impose a cumulative penalty will take care to satisfy the requirements of the New York court, his provision will probably prove effective in any jurisdiction.

In one of the leading New York cases the statute provided "every such corporation shall upon demand and without extra

charge give to each person paying one single fare a transfer . . . . for every refusal to comply with the requirements of this section, the corporation so refusing shall forfeit $50 to the aggrieved party." On each of four separate occasions the plaintiff paid a single fare, demanded a transfer and was refused. He recovered a judgment for $200 which the Court of Appeals reduced to $50. After citing earlier New York cases where cumulative penalties had been allowed under statutes containing the words "for every neglect" in one case and "for each offense" in another case, the opinion continues: "it is quite obvious that the legislative intention to permit the recovery of cumulative penalties for refusals of the defendant to comply with the provisions of the Railroad Law in regard to the transfer of passengers is as clearly manifested as in any of the cases cited. Notwithstanding this fact a majority of my brethren are of the opinion that while the rule for recovery of cumulative penalties as already adverted to is firmly established by the earlier decisions of this court, yet the changed conditions in the modern life of great cities render its modification imperative. There have been presented at the bar of this court civil and criminal cases where the aggregate penalties sought to be recovered have amounted to enormous and well-nigh appalling sums by reason of plaintiffs permitting a long period to elapse before beginning actions. Actions of this nature have become highly speculative and present a phase of litigation that ought not to be encouraged. The court is of opinion that if cumulative recoveries are to be permitted the legislature should state its intention in so many words; that a more definite form of statement be substituted for the words hitherto deemed sufficient. A sound public policy requires that only one penalty should be recovered in a single action and that the institution of an action for a penalty is to be regarded as a waiver of all previous penalties incurred." (Griffin *vs.* Interurban Street Railway Co., 179 N. Y. 438.)

In denying a motion for a rehearing of the above case the court added that it thought "every" is not always a synonym of "each." (Griffin *vs.* Interurban Street Railway Co., 180 N. Y. 538.)

That it is possible by good draftsmanship to give effect to a cumulative penalty provision notwithstanding the strict construc-

tion applied by the court against such penalties in the Griffin case, is shown by two subsequent cases in the same court.

A statute provided that no person shall manufacture, keep or offer for sale any adulterated vinegar, and that every manufacturer of cider vinegar shall plainly brand on the head of "each cask, barrel," etc., the words "cider vinegar," and that every person violating this provision shall forfeit $100 "for each violation." Held that while adulteration would constitute only one violation for all the vinegar inspected at any one time, yet the judgment for cumulative penalties should be sustained because under the terms of the statute a misbranding of each barrel constituted a separate violation. (People *vs.* Spencer, 201 N. Y. 105.)

A statute prohibited the sale of adulterated milk and expressly provided that "the sale of each one of several packages shall constitute a separate violation." Judgment for cumulative penalties was affirmed and the court said: "The precise language of the statute authorizes a recovery of aggregate, or cumulative, penalties . . . ." When it can be seen from the language of the statute that a penalty is expressly imposed for each instance of the violation, the intent will be given its full effect." (People *vs.* Abronson, 208 N. Y. 138.)

An act required a railroad twice a year to remove inflammable materials from certain portions of its right of way, and provided a penalty of $100 "for each day that it continues the violation thereof." Judgment reducing to $200 a verdict of $100 for each day from July 30, 1905, until the end of the year, and for each day from July 16, 1906, to the end of the year, was affirmed by the Court of Appeals on the ground that the statute was so uncertain in its provisions as to preclude a cumulative penalty; that the jury could not supply its failure to fix definite periods for observance; and that under a strict construction of the statute there could be no complete default until the last day of the calendar year, and that at the most there could be but a single day during which such default could be said to continue. (People *vs.* L. I. R. R., 208 N. Y. 541.)

These cases indicate that while the courts will not imply legislative intention to impose a cumulative penalty, it is possible to phrase the statute so that what would otherwise be a con-

tinuing offense is divided into a number of separate offenses, each subject to a penalty. For example, in the cohabitation case the statute might either have prescribed a penalty for each day or other period during which cohabitation continued, or it might have penalized not the cohabitation which is a course of action but some particular act that forms part of that course of action. In the mail case, on the other hand, that which was held a separate offense might have been held a continuing one if Congress had imposed the penalty not on the placing of a letter in the post office, but on the using of the mails to defraud.

Where the drafter is assured that the legislature desires to impose a cumulative penalty, he can make the legislative intention effective by observing the following rules:

(1) It should be distinctly stated that the penalty is to be imposed for "each" or "each and every" offense or violation.

(2) The provisions defining the requirement or prohibition of the statute should be so drafted as to clearly indicate just what constitutes such an offense or violation. The importance of this rule is indicated by a recent statute which carefully provides "that each act of dentistry shall be deemed a separate offense," but fails to indicate what constitutes an "act of dentistry."

(3) Where the act or omission penalized is in its nature continuing, some such provision as that "each day during which the violation continues shall constitute a separate offense" should be used to indicate when an offense is completed for the purpose of incurring the penalty.

Even where the drafter has followed these rules and has carefully indicated that what might otherwise be held to be a continuing offense for which only one penalty could be imposed, is to be divided into a number of separate offenses for each of which the penalty is to be imposed, there is still danger that the courts in some jurisdictions may by resort to considerations of public policy avoid the imposition of a cumulative penalty. The New York Court of Appeals has said that before it will impose such penalties, the legislature must declare its intention to impose them *in so many words*. Subsequent cases in the same court, however, indicate that if the rules herein suggested be followed, the cumulative penalty will be sustained.

Even where a cumulative penalty is sustained and imposed, as in the case of Jones *vs.* Rochester Gas Company, 158 N. Y. 678, for each day of a company's refusal to furnish service, an action for the penalty may be held to exhaust the right to recover for a continuation of the same refusal. After the recovery of the penalty in that case, a second action was brought to recover penalties from the day of the commencement of the preceding action. The court held that while the amount of the penalty would depend on the period during which the default continued, still it was a single penalty for a default which was also single, though it might be continuous, and that the cause of action being single, it was indivisible and but one recovery, therefore, could be had. (Jones *vs.* Rochester Gas Company, 168 N. Y. 65.) This case suggests the importance of a provision expressly allowing repeated actions if it is desired to make a penalty for refusal to comply with a request operative until compliance despite an intervening action for the penalties accrued to the time of its commencement. It is, of course, possible, as suggested by the court in the above case, that the person whose request has been refused may renew it immediately after commencing his action for penalties already accrued and thereby start a new default operative until compliance or subsequent suit.

If in spite of the exercise of the utmost care the draftsman is not entirely satisfied that he has effectually precluded any possible misconstruction of a cumulative penalty provision, there is a further suggestion which, while not too strongly to be relied upon, may prove helpful at least as a caution. The courts have in some cases shown a tendency to take into consideration the amount of the basic penalty in weighing the question whether or not the legislature has expressed an intent to impose cumulative penalties. While a small penalty such as $5 or $10 is not conclusive of such intent, nevertheless, a large penalty such as $500 of $1000 has sometimes been taken as almost conclusive or a contrary intent. For example, in Cox *vs.* Paul, 175 N. Y. 328, the court said " that penal statutes are not passed to enable parties to make money by cumulating penalties, but rather for compelling the performance of some duty, public or private, and ordinarily one penalty may secure the end as effectually as many, especially when the penalty is so large as in this case."

6. Comparative Desirability of Civil or Criminal Penalty.

Penalties may be divided into two great classes, civil and criminal, and a decision between these two forms must always be made by the careful legislator. Many considerations, such as local conditions, the general character of the persons or corporations which are subject to the particular law, the established practice or custom in the jurisdiction, etc., will inevitably enter into the determination, but there are some considerations which indicate the comparative desirability of one form or the other.

A criminal penalty, especially if it permits a sentence of imprisonment, may prove a greater deterrent and more to be feared. A civil penalty, or even a fine, if not too large in amount and seemingly commensurate with the gravity of a minor offense, is sometimes treated as a mere license for the privilege of violating the law. Regulatory legislation very often applies particularly to persons or corporations to whom a money penalty means little as compared with personal imprisonment for even a short period. This consideration, however, also has its limitations, for it must be remembered that if an offense is one which may appear to the average court or jury as technical or formal and not particularly culpable, so that they are reluctant to brand a defendant as a criminal, judgment may more readily be obtained against him in a civil action.

Criminal procedure is frequently more speedy and direct, and a criminal penalty, when once imposed by the court, may be more easily enforced or collected than a civil penalty. In this connection, however, a provision found in a recent act contains a suggestion. After imposing for each violation a penalty to be recovered by the commissioner of labor in an action of debt the act further provides for execution against the body of any defendant other than a corporation if sufficient goods and chattels to satisfy the execution are not found—the whole procedure being analogous to the common law *capias ad satisfaciendum*. (N. J. Laws, 1914, Ch. 121, §§13-15.)

A criminal penalty may more readily be made flexible between certain maximum and minimum limits, while the civil procedure of most jurisdictions affords little or no machinery for administering such provisions, as has already been more fully pointed out.

On the other hand, however, the practice in civil actions may increase the chances of a recovery. The slightest preponderance of evidence is sufficient to support a verdict in a civil case, while in a criminal case the evidence must be such as to convince beyond reasonable doubt. In some jurisdictions an added advantage is afforded by the fact that a less than unanimous agreement of a jury is sufficient for a verdict in a civil case.

There can be no remission or suspension by the court of a penalty recovered in a civil action; and in only a few of our constitutions does the pardoning power of the executive extend to the remission of civil penalties or forfeitures. Even under these constitutions, it would probably be construed as limited to penalties recovered directly by the state. The importance of this consideration has been shown in cases where minor courts not in sympathy with the purposes of a law have had jurisdiction of offenses under it. In certain counties in New York during the canning season, sentences for violations of the law regulating hours of labor have been remitted or suspended as soon as imposed.

A civil penalty insures to the department or official charged with the enforcement of a law, the right of appeal and an opportunity to secure a determination of disputed questions of constitutionality, validity and interpretation. In the case of criminal penalties, it is sometimes difficult to obtain such a final determination from the highest court in jurisdiction in which the state has no appeal from an acquittal, and it has happened not infrequently that the enforcement of a law which has eventually been upheld has been practically nullified for a long period through the adverse decisions of lower courts in directing verdicts of acquittal.

A requirement of the keeping of account books, time books, etc., and of the making of reports by those subject to the provisions of a regulatory statute is frequently an important part of the machinery for its enforcement. On the other hand, most of our constitutions contain the guarantee that no person shall in a criminal case be compelled to be a witness against himself, and if the penalty for the violation of such an act is a criminal one, there exists the possibility that important provisions essential to the administration of the act may be held unconstitutional

(Ferguson *vs.* Reardon, 197 N. Y. 236). This constitutional guarantee is expressly limited to criminal cases in the Constitution of the United States and in all but about six of the state constitutions.

It may sometimes happen that the interests of the public or of those who have been damaged by an offense might be furthered by a compromise (*e. g.,* full restitution if prosecution is discontinued) more than the interests of justice would be furthered by pushing the prosecution. A provision for a civil penalty gives the prosecuting officer an opportunity to make such a compromise not afforded under a criminal penalty.

While it may at times be difficult to decide the question of policy as between a civil and a criminal penalty, there is no excuse for failing to clearly indicate the form of the penalty and thus passing on to the courts an unnecessary problem of interpretation. In the present development of our jurisprudence, every action or prosecution must fall on one side or the other of the line dividing civil and criminal procedure, and it is inexcusable that penalty provisions of such a hybrid nature as those referred to in subdivision eight of this topic should be so frequently found in our legislation.

7. Criminal Penalties.

In drafting a provision which includes criminal penalties any inconsistency or failure to conform with the general criminal law and procedure of the jurisdiction should be avoided. From the very nature of the case it is impractical in this report to treat exhaustively this phase of the subject; but it is possible to point out briefly how an entirely different and unintended effect may result from such disregard on the part of the draftsman.

In many foreign countries criminal offenses, aside from offenses such as treason, which need not now be considered, are divided into three classes, *e. g.,* in France and Belgium into crimes (crimes), misdemeanors (delits), and trespasses or police infractions (contraventions), with further subdivisions within each class. In this country, however, such offenses are generally divided into but two grades—felonies and misdemeanors—and there is little or no subdivision within each grade, although the same purpose is attained through the different penalties pre-

scribed for different offenses. As, however, the operation of many provisions of law which are of general application—*e. g.*, such as those relating to jurisdiction, procedure, witnesses, juries, evidence, principals and accessories—often depends upon the grade of the crime, and upon the other hand the grade of the crime, if not specifically stated, may depend upon the same sort of general rule, the importance and necessity of keeping such considerations in mind when drafting a criminal penalty will readily be realized. For example, under such a provision as that of §2 of the New York Penal Law, to the effect that a felony is a crime which is and may be punishable by death or imprisonment in a state prison and that any other crime is a misdemeanor, the casual addition of the words "in a state prison" or "in a penitentiary" to a provision imposing the penalty of imprisonment might result in differences in the jurisdiction of the court having cognizance of the offense and in the rules of law affecting its prosecution entirely unintended by the proponents of the legislation.

In drafting a criminal penalty it is probably advisable to state that the person violating the statutory provisions "is guilty of a misdemeanor (or felony)." This precludes the possibility of a question whether the offense is criminal, and if so, of what grade, and of incidental questions as to the jurisdiction of the court, the manner of choosing a jury, etc.

In the construction of penalty provisions the question frequently arises whether a violation of a statute is punishable without proof of knowledge or intent on the part of the offender. The necessity for including the words "knowingly" or "wilfully" in defining the offense, or on the other hand expressly providing that knowledge or intent is immaterial, depends largely on such considerations as the nature and seriousness of the offense, its status at common law, the language of the statute in which it is defined, and the nature of the penalty which is imposed. The omission of such a provision defining the exact nature of the offense may necessitate a judicial interpretation, which in turn may materially affect the operation of the statute and contravene its most effective provisions.

At common law no crime was punishable without proof of a guilty mind, and an indictment was faulty which did not allege intent. With the development of police regulations, there arose

a new class of offenses defined by statute and commonly known as *mala prohibita.* A statute defining such an offence need not specify that intent or a guilty mind is essential to the imposition of punishment for its violation, but if it is intended that the state of mind is essential to conviction under such a statute, it should be so specified. Thus, in the case of violations of speed laws, Sunday closing laws, game laws, license laws, or similar legislation, punishment will be imposed on proof of violation irrespective of knowledge or intent on the part of the offender. But if the legislature makes even the slightest reference to the state of mind of the offender, it may be construed as an essential element of the offense. Thus, where a statute provided against selling liquor to minors and further specified that selling to a minor in a certain place should be deemed *prima facie* evidence of an *intent* to violate the law, the court held that there was a plain inference from the language of the statute that there must be an intent to violate the law before a conviction could be sustained (People *vs.* Welch, 71 Mich. 548). If the penalty imposed is severe, however, even though the statute itself defines the breach as a misdemeanor, a court will sometimes seize upon inapt phraseology to declare that an intent or guilty knowledge on the part of the offender is a prerequisite to the imposition of a penalty under it.

When a statute defines an offense which was also a crime at common law, it is generally held that the common law principles have not been abrogated and that a wilful act or knowledge on the part of the defendant is necessary to a conviction. Thus when a statute defines burglary as including the breaking and entering of a dwelling house in the day time and affixed a penalty of from ten to twenty years in the penitentiary, it is not to be presumed that an indictment under the act would be upheld without proof of intent. A crime which is a *malum in se* and at common law required intent will not be changed in this respect when defined by statute unless the statute expressly provides that intent is not an element. When, however, a statute defines a crime in an entirely different manner than at common law, or defines a new crime which did not exist at common law, and a penalty is imposed which is very severe, the question whether it is necessary to prove knowledge or intent as an element of the crime is one of inter-

pretation, and the draftsman should carefully consider the advisability of expressly stating whether knowledge or intent is an essential element. Of course, if general statements in the provisions show that it is not, specific reference need not be made, but if the offense falls within the class last considered, an express provision as to whether the state of mind of the offender is an element of the offense should be included.

The penalizing of violations of administrative rules and regulations presents no additional difficulties, except that until quite recently there existed some question as to whether a criminal penalty could be imposed by the legislature for an offense which the legislature itself had not specifically defined. This difficulty has, however, been finally disposed of by the Supreme Court of the United States, which sustained an indictment for a violation of a regulation concerning the grazing of sheep within forest reserves. The regulation had been made by the Secretary of Agriculture under an act of Congress giving him power to make rules and regulations to " insure the objects of such reservations, namely, to regulate their occupancy and use, and to preserve the forest thereon from destruction," but making no specific mention of the grazing of sheep (United States *vs.* Grimaud, 220 U. S. 506). It is just possible that there may still be some jurisdictions which would refuse to adopt the view of the Supreme Court upon this once doubtful question; but similar convictions for violations of administrative regulations have been sustained in several states. (Commonwealth *vs.* Sisson, 199 Mass. 447; Pierce *vs.* Doolitte, 130 Iowa 333; State *vs.* Snyder, 131 La. 145.)

There is real doubt, however, of the constitutionality of a form of provision not uncommon in England, authorizing the fixing of the amount of the penalty by administrative regulation (*e. g.*, the Mental Deficiency Act, 3-4 George V, Ch. 28, p. 166, provides that any person guilty of a breach of any regulation made under the act shall be liable to a penalty to be prescribed by such regulations within a maximum fixed by the act). The fixing of the penalty in this manner is little more advantageous than the fixing of it directly by the legislature, and as there is seldom any need for a provision in this form, it should be avoided as of doubtful validity. This objection, of course, does not apply to municipal and other subdivisions of the state, the delegation of

local legislative powers to which has always been sanctioned by the principles of constitutional law, and it is possible that in some jurisdictions such quasi-administrative agencies as health boards would be included in the class to which such power can be delegated (*c. f.*, Compiled Statutes of New Jersey, 1910, title "Health," §§50-51).

Mention should also be made of a not uncommon error found in provisions for the punishment of offenses both by fine and imprisonment. In most such instances a flexible penalty of a fine or imprisonment or both is mentioned; and where such is the intent the conjunction "or" should be used and not "and" as has not infrequently happened in provisions where a different meaning was obviously intended.

8. Civil Penalties.

In the case of a criminal penalty it is of course unnecessary to provide by whom the prosecution is to be brought; but a provision for a civil penalty should indicate upon whom the right of action is conferred—whether the state or a specified officer charged with the administration of the particular law, or a common informer or the party suffering damage on account of the violation.

It is in provisions for civil penalties that draftsmen have not infrequently committed a most flagrant breach of good form—at least it is such in most jurisdictions. Although in a few jurisdictions the courts have held to the contrary, the term "fine" ordinarily implies a criminal penalty and is for example defined by Bouvier as "a pecuniary punishment imposed by a lawful tribunal upon a person convicted of a crime or misdemeanor." The mode in which fines and penalties are to be recovered is a matter of legislative discretion and a statutory provision that a "fine" is to be recovered in a civil action would, of course, be enforced by the courts. Such wording is, to say the least, bad form, and at the worst may give rise to ambiguities as to just what procedure was intended. The use of any such terms as "fine," "guilty" or "conviction" should be strictly avoided in the drafting of any penalty provision not criminal in its nature.

An interesting question arises when a civil liability for a wrongful act is imposed by a statute. A provision of this sort is

penal in the sense that it is to be strictly construed and if the liability is enforced in an action by the state or even by a common informer, it is, like a criminal prosecution, penal in the sense that such an action cannot be maintained in the courts of another state or country. But if there is given to the party damaged a right of action which otherwise would not have existed the action on his part is remedial and enforceable in the courts of another jurisdiction. (Huntingdon *vs.* Attrill, 146 U. S. 657.) Whether the same is true if the statute allows the recovery of damages in excess of those actually suffered, *e. g.*, double or triple damages, is a more open question; but a right of action for double damages in case of neglect by a town of its duty to keep the highways in safe condition has been held "purely remedial" and as having none of the characteristics of a penal prosecution (Reed *vs.* Northfield, 13 Pick. 94); and a statute creating a liability for damages for the infringement of the copyright of a dramatic composition "to be assessed at such sum, not less than $100 for the first, and $50 for every subsequent performance, as to the court shall seem just" has been held not a penal statute. (Brady *vs.* Daly, 175 U. S. 148.) The case cited is probably authority for the point that where the inherent difficulty of proving by satisfactory evidence the amount of damages actually sustained is great, a statute fixing as liquidated damages an amount sometimes exceeding the actual damages, is strictly remedial and not penal.

A novel example of this form of penalty is found in a recent act requiring the prompt payment of wages, which provides that a laborer making written demand for unpaid wages within twenty-four hours after discharge shall recover in addition to wages due, a penalty of as much per day for the time the wages remain unpaid, not exceeding thirty days, as he was receiving at time of discharge. (South Carolina, Act of March 6, 1915.)

9. Form and Phraseology.

In the drafting of penalty provisions it is especially important that the rules and principles of drafting should be carefully followed, as no other form of legislation is subjected to more critical tests by the courts. That the most simple, plain and concise statement is the best cannot be too strongly emphasized.

The detaching of clauses, an expedient well adapted to the clear expression of all penalty provisions, and one which is commonly practiced in European countries, has been treated at considerable length under the heading "Canons of Style" in Topic I,[1] to which reference should be had. The best American example of this detaching of clauses is probably found in the Penal Law and codes of procedure of New York.

In American legislation the penalty provisions generally follow the substantive provisions to which they relate, but in England they are frequently found at the beginning of an act. It is doubtful, however, whether any great advantage would follow the adoption of the English practice in this country.

It is probably unnecessary to use the double form "violation of or failure to comply with" as the term "violation" is sufficiently broad to include acts of omission as well as of commission (State *vs.* Case, 53 Mo. 246), and when an act regulating the manufacture of goods also prohibited the sale of goods made in violation of its provisions, an indictment for a sale of goods manufactured outside of the jurisdiction has been sustained on the ground that violation means "practical non-conformity as well as punishable transgression" (People *vs.* Fox, 4 N. Y. App. Div. 38).

It is seldom necessary to scatter through a code or general law, which may be subject to many different kinds of violations, different penalty provisions for different substantive provisions. It may be that all violations cannot be included in one penalty provision, but generally most violations can be so included. One section providing penalties for all violations "except as herein otherwise provided," and special provisions for the punishment of violations, which for one reason or another really deserve special treatment, will generally be found the most satisfactory form. Even a cursory reading of the Act to Regulate Commerce furnishes convincing proof of the usefulness of working a penalty provision into almost every page of a long act.

Where an offense is sufficiently defined by the substantive provisions of a statute it is best as a general rule merely to refer in the penalty provision to the substantive requirements or prohibitions—*e. g.*, as "provisions of this act," "provisions of sec-

[1] Annual Report of the American Bar Association for 1914, page 645.

tion ten," etc.—and not to attempt a further definition of the offense. If in any instance, however, it is thought desirable to repeat such a definition in the penalty provision, extreme care should be taken to use exactly the same form and phraseology as found in the substantive provisions. Any other course is subject to a great risk of resulting in an inadvertent difference in the offense as defined in the two provisions—*e. g., cf.,* the exceptions stated in New York Labor Law, Par. 7 (Laws of 1913, Ch. 462), and in New York Penal Law, Par. 1271, subdivision 4 (Laws of 1907, Ch. 506).

It must be remembered that to the extent that a penalty provision relates to and is dependent upon substantive provisions, as almost every such provision does, it is incomplete in itself, and especially is this so if it includes a cumulative penalty. The draft of such a provision cannot be considered finished unless when considered and tested in connection with the substantive provisions to which it relates, all taken together make a complete and perfect whole.

10. Illustrative Provisions.

The following drafts of typical penalty provisions have been prepared in illustration of the principles here discussed:

" (a) Any person who violates any provision of this act or of the regulations made in pursuance thereof is guilty of a misdemeanor, and upon conviction shall be punished for a first offense by a fine of not less than $20 nor more than $100; for a second offense by a fine of not less than $50 nor more than $250, or by imprisonment for not more than thirty days, or by both such fine and imprisonment; and for a third or subsequent offense by a fine of not less than $100 nor more than $1000, or by imprisonment for not more than one year, or by both such fine and imprisonment. A violation constitutes a second offense if committed after one conviction of the same person for a violation of the same or any other provision of this act or of the regulations made in pursuance thereof, and constitutes a third or subsequent offense if committed after two or more such convictions. (The term 'person' is used in these drafts on the assumption that it is elsewhere defined as including also corporations, associations, etc. In this connection note the use throughout the Criminal Code of the United States of the term 'whoever.')

" (b) Any person who violates any provision of this act or of the regulations made in pursuance thereof, shall, for each viola-

tion, be liable to a penalty of $50, to be recovered in a civil action by the people of the state.

" (c) Any person who sells or gives a cigarette to any minor under the age of sixteen years, shall for each cigarette so sold or given forfeit and pay to the parent or guardian of such a minor the sum of $10, to be recovered in a civil action by the person entitled thereto.

" (d) Any person who violates any provision of this act shall for each violation forfeit to the people of the state the sum of $100, to be recovered in a civil action. When the violation consists of the manufacture or production of any article or substance, or the maintenance of any condition, or the continuance of any course of action, each day during any part of which such manufacture or production is carried on, or such condition or course of action is maintained or continued, constitutes a separate violation. When the violation consists of the sale or exchange or the offering or exposing for sale or exchange of any article or substance, the sale or exchange of each one of several packages shall constitute a separate violation, and each day on any part of which any such article or substance is offered or exposed for sale or exchange constitutes a separate violation. When the use or furnishing for use of any such article or substance is prohibited, each day during any part of which such article or substance is so furnished for use constitutes a separate violation, and the furnishing of the same for use constitutes a separate violation as to each person to whom it is furnished." (See N. Y. Agricultural Law, Par. 52, Laws of 1901, Ch. 656.)

APPENDIX C.

LETTERS FROM OFFICERS OF OFFICIAL BILL DRAFTING AND REFERENCE AGENCIES, DETAILING THE WORK BEING DONE BY THEIR RESPECTIVE AGENCIES.

CALIFORNIA.

LETTER OF ARTHUR P. WILL, CHIEF OF CALIFORNIA LEGISLATIVE COUNSEL BUREAU, DATED MAY 14, 1915.

" This bureau was created by an act of 1913, a copy of which is enclosed herewith. It was not organized, however, until the summer of 1914. The act creating it has been amended so as to impose upon the chief of the bureau the duty of revision of initiative measures as described in Senate Bill 723, a copy of which is enclosed herewith and which has become law.

"The months intervening between the organization of the bureau and the meeting of the legislature were occupied in consultation with various departments of the state government relating to the measures which they contemplated presenting to the legislature, in gathering from this state and elsewhere information on various subjects which it seemed probable that the legislature would consider, in drafting bills in response to requests by members of the legislature and in otherwise preparing for effective and adequate service. When the legislature met it was speedily seen that none of this preparatory work had been wasted. The services of the bureau were immediately availed of as though it had been in operation for many years. There seemed to be very little doubt amongst the members of the legislature as to the lines along which its services could be utilized. Of the 40 members of the Senate and 80 members of the Assembly, 120 in all, 115 resorted to this bureau during the session for service of various kinds and extent. In addition to these members of the legislature, we were called upon by nine departments of the state government and the executive. If one may judge from expressions of the legislators and heads of departments, the state will never again be without such a bureau. The legislature has increased our appropriation and various lines of work have been laid out for us which will undoubtedly occupy our time very fully until the next session. Along with other work we shall codify the laws under which various departments are operating.

"One noticeable feature about the development of our work in this state is that the drafting of bills is only one form of the activities of the bureau. Reference to it as a bill drafting bureau indicates a very imperfect conception of its purpose and duties and actual operation. It is a Legislative Counsel Bureau in the fullest meaning of the term. The chief of the bureau, during the session of the legislature, was daily called upon to express his opinion as to the practicability of proposed measures and their relation to existing laws, to give opinions verbally and in writing as to the constitutionality of proposed laws and in other ways to counsel the legislature and the departments. As far as we were able during the rush of our daily work, we kept track of the progress of legislation in other states regarding subjects of interest to the people of this state. The bureau was constantly called upon to prepare amendments to bills already introduced and to advise the legislative committees on revision and printing. It is to be remarked, however, with emphasis, that neither the chief nor any member of the staff either urged or opposed, directly or indirectly, legislative action upon any measure.

"An important provision of the law creating this bureau is that requiring the chief of the bureau to remain at the call of the Governor for the 30 days following the adjournment of the legis-

lature—the period allowed by the constitution for the signing of bills.

"In conclusion, it may not be inappropriate to say that the relations between the bureau and the members of the legislature have been most harmonious. On the one side, the bureau has been anxious to render every service within its power that could lighten the work of the legislators, and on the other side the members of the 41st session of the legislature—an exceptionally able body, by the way—have displayed the utmost consideration and appreciation."

ILLINOIS.

LETTER OF FINLEY F. BELL, SECRETARY OF THE LEGISLATIVE REFERENCE BUREAU, DATED APRIL 23, 1915.

"The bureau has four functions, viz.: The collection of data, recording of procedure during the session, preparation of the budget, and the drafting of bills.

"As compared with the bureaus in other states, we have been assigned more work than perhaps any other bureau, and it is rather difficult to set forth within the scope of this letter, our accomplishments to date. . . . . Our attempt along the lines of scientific budgetry has been the first made in this state, and it has been very well received by the legislature. Our Legislative Digest, which is issued weekly, seems to fill a long needed want. Of the bills introduced so far, this bureau has prepared about 90 per cent, and while I cannot affirm that they are flawless, I feel safe in the assertion that their preparation was effected with more care than similar bills introduced in the legislature.

"The popularity of the bureau is growing daily. It is being constantly used, not only by members of the legislature, but the public as well. The question now is, not so much what a bureau can accomplish, but how did the legislature ever get along without it?"

INDIANA.

LETTER OF JOHN A. LAPP, DIRECTOR OF THE BUREAU OF LEGISLATIVE INFORMATION, DATED APRIL 29, 1915.

"This bureau was originally organized as the legislative reference department of the State Library. In 1907, it was given an appropriation of $4000 and the work was actively begun. The law required the collecting of information and the drafting of bills under direction of members of the legislature. Considerable work was done at the beginning with this limited appropriation.

"In 1911, the appropriation was slightly increased and the department was authorized to co-operate with the University of

Indiana and also to organize a municipal reference section for the purpose of aiding cities of the state.

"In 1913, the bureau was organized separately under the direction of a board consisting of the Governor, State Librarian, the presidents of the two state universities and one additional member appointed by the Governor. An annual appropriation of $13,500 was provided and that appropriation was continued by the 1915 legislature. The work is merely an expansion of that which was carried on in the beginning. Gradually the amount of work passing through the department has increased until at the session of 1915 approximately three-fourths of the bills were either drafted in this department or revised. The preparation of bills has been the largest element of the work of the bureau. The material gathered has been used more extensively by members of the staff in preparing such bills than by the individual members of the legislature. This is inevitable because the ordinary member is not a student and cannot use research materials to very great advantage. A few members do extensive research work and to these the department has been very helpful. On the whole, however, the material gathered serves its greatest purpose in putting at the command of the staff of the bureau the information which they need in working out concrete propositions in the form of bills.

"Two fields of work have been especially fruitful for the bureau. One that of co-operating in the conduct of legislative investigations. This bureau did practically all of the work for the Industrial Education Commission in 1912 and 1913 and did practically all of the research work for several commissions and investigations created in 1913. For the coming year similar duties are put upon the bureau in helping the Commission on Taxation. The second work of importance is that of revising and codifying statutes on certain subjects. The 1915 legislature put the duty of codifying the health laws and the mining laws upon this department in co-operation with special commissions. The work of the department is carried on regularly by a staff consisting of eight members and one additional person from the University of Indiana who co-operates in the municipal reference work. During the last session we had 24 employees and besides the stenographic force of the House of Representatives was placed under the direction of the bureau.

"The inadequate facilities for giving information on pending legislation has caused us to develop the facilities for the copying of bills introduced and furnishing information. This work will be expanded in the future unless the legislature provides a method of giving information to the public.

"I am convinced that a department of this kind must take hold of the whole problem for the preparation of bills in connection

with a bureau of information. I do not believe that efficiency will be developed by creating a bureau of reference independent of a drafting department."

OHIO.

LETTER OF C. B. GALBRATH, DIRECTOR OF THE LEGISLATIVE REFERENCE DEPARTMENT, DATED MAY 1, 1915.

"This department was organized in 1910 as a part of the state library. This plan was continued until February, 1913, when it was made a separate state department with a director. At present the state librarian has been appointed ex-officio director without compensation.

"The work of the department this winter has been mainly in drafting bills, about 300 of the bills which were introduced in the legislature having been drafted in this department. A great deal of reference work has also been taken care of, chiefly of a comparative nature in looking up laws and legislation in the various states which would help in the legislation in this state. During the past two years three bulletins have been issued by the department. Prior to that time there were several bulletins issued under the direction of the state librarian.

"I feel that these departments are of great value to the members of the legislature and there are possibilities of doing a great amount of research work along legislative lines."

PENNSYLVANIA.

LETTER OF JAMES N. MOORE, DIRECTOR OF THE LEGISLATIVE REFERENCE BUREAU, DATED MAY 28, 1915.

A SHORT SYNOPSIS OF THE WORK DONE IN THE LEGISLATIVE REFERENCE BUREAU.

"The Legislative Reference Bureau was created by the act of April 27, 1909, P. L. 208, which act was amended by the act of April 21, 1911, P. L. 76. The bureau was established primarily for the use and information of the members of the General Assembly, the heads of the several departments of the state government, and such other citizens of the commonwealth as may desire to consult the same. Under the act creating the bureau it becomes the duty of the director and his assistants, upon request, to aid and assist the members of the General Assembly, the Governor and the heads of the departments by advising as to bills and resolutions, and also to draft the same into proper form for presentation to the legislature. The bureau is also directed to furnish to the members of the General Assembly, the Governor and the heads of the departments, full information upon all

matters which may be of public interest. The bureau is prohibited from either urging or opposing legislation and may not suggest any bills to the General Assembly for introduction. In the drafting of bills the bureau follows the request of the author of the bill and may insert no provisions which have not been suggested. The purpose and aim of the bureau in the drafting of bills is to pay particular attention to the form in which they are drafted, to make them readable and easily understood to look into their constitutionality, both as to form and substance and their effect upon existing legislation. In this connection suggestions are ofttimes given to the authors of bills which may be either adopted or rejected.

"Under the act creating the bureau it is not compulsory that bills submitted to the legislature should pass through the bureau, either before or after presentation, but that the work of the bureau has been of some value and is appreciated by the members of the General Assembly and the heads of the departments of the government is best shown by the fact that out of a total number of 2189 bills presented at the last session of the legislature, approximately 60 per cent of them were drafted or revised by the bureau before presentation.

"In addition to the drafting of bills much valuable assistance is given to the members of the General Assembly in the drafting of amendments to bills during their passage through the legislature, and also much information is given showing the effect of proposed legislation upon the existing legislation and the operation of such legislation in other states.

"During the sessions of the legislature the bureau maintained in each branch of the General Assembly a bill-book clerk who keeps a record of all legislation which is immediately after each session entered in the records of the bureau so that at any time the status of any particular bill which has been introduced can be readily ascertained. In addition to the status of the bills in this record, the bills are minutely indexed so that any particular bill which has been introduced may be easily located.

"In addition to collecting much valuable information relating to matters of public interest, the bureau is authorized to prepare from time to time and publish bulletins, pamphlets and circulars containing information collected by the bureau and such compilations of the laws of this or other states as may be deemed to be of service to the several departments of the state government and to members of the General Assembly. Several of these publications have been prepared and have been widely distributed and have proved of great value to the citizens of the state.

"By the act of May 20, 1913, P. L. 250, the bureau was directed to examine the entire statute law of the commonwealth and to ascertain as nearly as may be what laws and parts of laws

have been repealed or which have become obsolete, and to prepare lists of the same. The bureau was also authorized to cause to be prepared, for adoption or rejection by the General Assembly, compilations, by topics, of the existing general statutes, arranged by chapters and sections, under suitable headings, with accompanying lists of statutes to be repealed and also to cause to be prepared codes of the existing laws on each of such topics, together with lists of statutes to be repealed, in the event of the adoption by the General Assembly of any of such codes.

"In this connection during the last two years the bureau has examined the entire statute law of the commonwealth and by a system of marginal notes has attempted as nearly as may be to ascertain the exact status of every general act of Assembly in Pennsylvania.

"In addition to this the statute law has been minutely indexed by a cross-reference system so that by taking any particular subject of the law all the acts of Assembly that have ever been passed upon that subject can be speedily located.

"In addition to this work upon the statute law three compilations were prepared; namely, a compilation of the corporation law; a compilation of the law relating to taxes; both state and local, and a compilation of the law relating to boroughs. At the same time codes were prepared upon these subjects including all the statute law and arranged by chapters, articles and sections with a repealing clause repealing all existing legislation. Of the codes presented up to the present time the one relating to boroughs has been adopted by the General Assembly. This code in itself embodies in one act all the law which before was scattered through 275 or more acts and covering a period of almost a century.

"The bureau also presented to the legislature a bill repealing all the statute law which had become obsolete, or which was repealed by implication, supplied, superseded or declared unconstitutional by the court, but which had never been specifically repealed and still remained upon the statute books where it served only to confuse. This repealing bill, which repeals approximately 875 acts, has been passed by the General Assembly and is now in the hands of the Governor."

VERMONT.

LETTER OF JOHN M. AVERY, LIBRARIAN OF THE LEGISLATIVE REFERENCE BUREAU, DATED APRIL 22, 1915.

"The Legislative Reference Bureau was originally established in Vermont by the legislature of 1910 under the supervision of the State Library and with an annual appropriation of $1000. In the act of 1910 there was no provision made for bill drafting but the rules of the legislature provided for a joint committee known as the 'Revision Committee,' to whom all bills were re-

ferred previous to their introduction for correction as to phraseology, form, etc. The act of 1912 amending the act of 1910 increased the appropriation for the department from $1000 to $5000 annually and provided for two officers known as 'revisers of bills' to be appointed by the Governor and confirmed by the Senate and to hold office until removed for cause, whose duties should be similar to those formerly performed by the Revision Committee. The statute on this point read as follows:

> "It shall be the duty of the revisers of bills to examine, previous to their introduction, all bills and resolutions presented to either branch of the legislature, making such corrections as may be necessary to insure accuracy in the text and references, clear and concise language, and consistency with existing statutes, and to avoid repetitions and unconstitutional provisions. . . . ."

"The legislature of 1915 again amended this act regarding the revisers of bills leaving as before that part regarding the legislative reference work. The provision regarding the revisers of bills was amended so as to read as follows:

> "SEC. 3. On the first Friday of each session of the General Assembly two men of legal training and practice, who shall not be eligible to membership in either branch of the legislature during their incumbency in this office, shall be appointed for a term of two years or until their successors are appointed, by the President of the Senate, and the Speaker of the House, to be known as legislative draftsmen. Any vacancy caused by the death, resignation, or removal of a legislative draftsman, shall be filled for the unexpired term by the Speaker and the President of the Senate. In case the Speaker and President of the Senate cannot agree upon the appointment of the legislative draftsmen the Chief Justice of the Supreme Court shall have the deciding vote.
>
> "The legislative draftsmen shall perform their duties in the office of, and in connection with, the Legislative Reference Bureau in the State Library.
>
> "SEC. 4. The legislative draftsmen shall give assistance to members and committees in the drafting of bills, resolutions and amendments, if so requested, but shall not oppose nor urge legislation, nor the election of any officer by the General Assembly.
>
> "The legislative draftsmen shall perform for the Senate and the House of Representatives all the duties of a Committee on Revision of Bills, except when the joint rules of the Senate and House of Representatives provide that such committee be otherwise constituted."

"The principal arguments advanced in behalf of this change are that these officers should be responsible to the legislature

whom they serve rather than to a Governor who may be out of office during their term of service and they should not have power to decide regarding the constitutionality of an act. Number 19 of the Senate rules provides as follows:

> "All bills intended for presentation by any member of the Senate shall be first presented to the revisers of bills, whose duty it shall be within three days after receiving each bill to examine and revise the same as to form and expression, so far as it may require and, after certifying to such revision, said committee shall deposit the same with the Secretary who shall submit the same to the President...."

"There is a similar rule in the House regarding the introduction of bills.

"As regards the bill-drafting work I might say I think service during the last session of the legislature was quite satisfactory, there having been a uniformity of phraseology and form which is quite desirable and practically impossible under any other method.

"The reference service is conducted in a manner similar to that in other states and is closely allied to the drafting service, the librarian at times serving in drafting bills.

"During the last session there was put into operation a plan of indicating by the method of printing in amendatory bills, what was old and what was new matter."

APPENDIX D.

EXTRACT FROM THE REPORT OF THE JOINT SPECIAL COMMITTEE ON LEGISLATIVE PROCEDURE OF THE MASSACHUSETTS SENATE AND HOUSE OF REPRESENTATIVES, RECOMMENDING "THE ESTABLISHMENT OF A NEW OFFICIAL TO BE CALLED 'CLERK OF COMMITTEE,' TO BE AN EXPERT UPON DRAFTING LEGISLATION AND TO HAVE CHARGE OF THE DETAIL OF COMMITTEE WORK."

"There has been a universal movement within the last few years for more uniform, consistent and better drafting of our statute law. For two years the American Bar Association has emphasized this movement. It has been taken up by the Massachusetts Bar Association, and only recently Elihu Root delivered an address in Washington, D. C., which has been widely quoted by the press of this state.

"By gathering, compiling and indexing material on general, economic and legislative subjects, a member is able to secure the

latest information relative thereto at the expenditure of a minimum amount of time and energy. Take, for instance, such questions as the regulation of public service corporations, milk legislation, divorce, direct primary, or, more recently, workmen's compensation, blue-sky laws and modern methods of taxation, the latest bibliography, together with the recent enactments in other states, can be made available. Such a library was established in Massachusetts in 1910 as a branch to the State Library, and its service to the members of the legislature is best evidenced by the increase in its average use by from 15 to 40 members a day.

"The second aid to better legislation is the establishment of some form of a drafting bureau. Some states include assistance in drafting with the duties of the reference library. . . . .

"The committee has investigated the various systems in effect in these different states. We do not believe in the adoption of a system similar to Wisconsin, where the drafting is done by officials in the reference library. We do believe that the reference library should be separate, but at the disposal of the drafting official as well as members of the legislature.

"The committees on bills in third reading, with clerical assistants in each branch, are now allowed 48 hours to examine bills submitted to them. This is entirely inadequate for the purpose, and in long bills permits only the correcting of language and a verification of references. Supplementary to the above system it would be adequate, and we believe such a check should be maintained.

"Such an official as a clerk of committees, to have charge of drafting legislation, would have to be an expert or one capable of becoming an expert. There is available today very little knowledge on the subject. The profession, if such it may be called, is in its infancy. There are or ought to be certain underlying principles fundamental to an adequate conception of such duties, but apparently they are for the most part undiscovered. There have been intermittent attempts to set forth certain rules to govern the drafting of bills such as the Indiana pamplet of 1910. We understand that the American Bar Association is to prepare a legislative manual, with this in mind. A collection of the decisions of the United States and Massachusetts Supreme Courts on interpretation of certain phraseology, meaning of words and construction of statutes would be invaluable. Such judicial decisions would furnish ample precedent in the wording of the law to be drafted. Time should be taken to investigate the question of constitutionality, with reference to both the state and national constitutions, and any judicial decisions thereon.

"Each act should be carefully tested as to its harmony and co-ordination with existing law, to see whether it is a duplicate of any other law or is inconsistent with any, or does in another way

what is already done in one way. The provisions of the act should be clearly adequate to its purpose without accomplishing something never intended. They should be studied with reference to economic, social and business conditions of that part of society affected. With all this there should be brevity, simplicity of form and freedom from ambiguity.

"If that is not a task for an expert we know of none. We pride ourselves on the care that committees now give to the drafting of important bills, yet even here in Massachusetts, judging from the above tables, there is much that is enacted that is loose, slipshod and subject to continual revision or interpretation either by the legislature or the courts. We have only to cite the famous 'semi-colon' law, so-called, as a typical illustration, and the 'red flag' law of this past year as another.

"This office should be created by the legislature and be under the control of the legislature. The incumbent should be assured, either directly or indirectly, of some permanency in his tenure of office. He should be absolutely non-partisan, and should in no way initiate or influence legislation.

"There are other important duties he could be intrusted with, other than mere drafting of bills. He could be given custody of all bills referred to committees, which might save some inconveniences of the past due to lost or mislaid bills. He could arrange the hearings and attend to the giving of notices for the same. By having charge of the advertising, much that is unnecessary would be eliminated. He should keep the records of the committees and a record of attendance of its members. If the rule should be adopted requiring bills to be filed in December, he could arrange the references and the printing of the bills. He could prevent the printing of duplicate bills, of which there are always many, by giving a receipt to every person filing the bill, on which it could be stated that it was received and would be printed if nothing substantially like it had already been printed.

"Between the sessions of the legislature, he could bring up to date the laws on some particular subject by a process of revision, elimination and codification, repealing obsolete parts and harmonizing conflicting portions. Such a codification should be submitted to the legislature for action."

APPENDIX E.

REPORT OF WM. A. SCHNADER OF THE PHILADELPHIA BAR ON WAYS FOR IMPROVING THE DRAFTSMANSHIP OF INITIATIVE LAWS AND CONSTITUTIONAL AMENDMENTS.

PHILADELPHIA, PA., June 18, 1915.

The Committee on Legislative Drafting of the American Bar Association.

SIRS: In response to your request, I take great pleasure in giving you herewith a few random observations regarding the possibility of providing for the better draftsmanship of measures submitted to the electorate under the initiative.

As you know I made an investigation on the practical operation of the initiative and referendum several years ago under the auspices of the University of Pennsylvania Law School. My primary purpose was to discover, if possible, whether the initiative and referendum had been successful in practice entirely aside from any theoretical considerations. Naturally one of the very pertinent factors which must be considered in such an inquiry is the technical quality of the measures brought before the voters by initiative petition. This factor is even more important than it would otherwise be because in a number of states the initiative may be invoked not only for the proposal of statutes, but of constitutional amendments as well. Inartificially drawn statutes are utterly undesirable; but except in states where initiated laws can be amended only by popular vote, vicious statutes can be much more readily amended or repealed than undesirable constitutional provisions.

The suggestions usually made for the safeguarding of the initiative and the referendum have to do with the method of circulating petitions. The question whether petitions to place measures on the ballot should be permitted to be circulated for pay has been the storm-center of a heated controversy in which the ardent advocates of direct legislation usually defend paid petition circulating. Those who insist that all petitions should be procured solely by voluntary effort argue that the circulation of petitions for compensation tends to multiply fraudulent signatures and thus to bring before the voters many measures which would not be on the ballot were paid circulating prohibited.

It cannot be disputed that charges of fraud have frequently been made in the states which do not forbid the circulation of petitions by hired solicitors. In Oklahoma, for example, more than 50 per cent of the petitions circulated prior to 1914 were alleged to contain fraudulent names. One officer of the Depart-

ment of State was specially deputized to act as a judge of fraud charges and a large part of his time was consumed by the performance of his duties along this line. It is alleged that most of the petitions which were adjudged fraudulent to such an extent as to prevent the measures which they contained from appearing on the ballot, were circulated by paid solicitors whose only interest was the procurement of their per-name compensation. In California charges of fraud were made in connection with several petitions circulated for the submission of measures to the voters at the 1914 election. In Oregon fraud charges have been frequent. In State *vs.* Olcott, 125 Pac. Rep. 303 (1912), the State Supreme Court was called upon to investigate the circulation of an initiative petition, and in its opinion the following language was used:

> "That there was no general and spontaneous desire on the part of the general public to withhold the appropriation from the university soon became apparent, and the promoters were compelled to employ an attorney to secure the necessary signatures. This in itself was not an unusual course, as it is difficult to find citizens who are so devoted to their principles as to be willing to circulate such petitions without compensation. They employed Mr. Parkinson of Portland, who undertook to procure such signatures for 3½ cents a name. He employed a large number of circulators, who went forth into the highways and byways to procure signatures. Seven of these, at least, devised an easy method of earning their money. They would get together and pass their petitions around each signing a few names in a disguised hand, thus minimizing the chance of detection. These forgeries were clearly proved, mostly by the admission of the parties. The petition as filed contained 13,715 names. Of these it is admitted that 3778 are forgeries, perpetrated by dishonest circulators."

Charges of fraud have also been made in South Dakota and in Ohio. Those who place the blame for the perpetration of frauds of this sort on the possibility of having petitions circulated for pay, allege that aside from the actual forgery of names by unscrupulous circulators, persons who receive pay for the names which they procure bring undue influence of every description to bear upon those from whom they solicit signatures. They frequently urge that to sign the petition does not commit the signer to the measure, while it will bring from three to fifteen cents into the pocket of the solicitor. It is also alleged that persons who make capital out of the circulation of these petitions often misrepresent their contents in order to procure names.

Friends of the initiative and referendum deny that fraud is exclusively committed by those who are paid for circulating

petitions. They allege that voluntary circulators are just as capable of the practices charged to hired solicitors. Regardless of the merits of the controversy between the defenders and opponents of paid circulation, it is obvious that this question bears on the technical perfection of the proposed measure very indirectly, if at all. It may be that if only voluntary solicitation of signatures were possible, fewer measures might appear on the ballot, but it is not evident that the measures eliminated would be the least perfectly drawn. It seems to me, therefore, that this subject is rather irrelevant to the question before your committee.

Another matter which has been very strenuously debated in initiative and referendum states is the manner of advertising initiated and referred measures. Those most interested in the success of direct legislation insist that unless measures and arguments for and against them are brought to the attention of the voters in a reasonably convenient way, the possibilities of the initiative and referendum cannot be thoroughly developed. This contention cannot very well be denied.

Merely to publish proposed measures in fine print in a regular edition of a newspaper of general circulation for a stated number of times must necessarily have but little effect in informing the voters as to the measures on which their ballots are to be cast. On the other hand, the circulation by the state of a pamphlet similar to that distributed by Oregon, cannot help but bring home to a certain percentage of the voters, whether large or small, intelligent information with respect to the nature of the questions which are to come before them. But here, again, while a well-informed electorate may vote more intelligently on measures, the fact that the voters are well-informed will not technically perfect measures which have already been initiated. It may prevent ill-considered and poorly-drawn measures from being adopted; that is the only possible effect it can have on initiative draftsmanship.

Coming now to the direct consideration of the drafting of initiated measures, it must be remarked at the outset that no systematic effort has been made in any state to safeguard the statute-books against ill-prepared direct legislation. Heretofore every suggestion to supervise the use of the initiative has been met by its friends as an attack on the principle of the initiative; and as the majority of the voters seem to regard both the initiative and referendum as so-called "popular" institutions, practically every effort to curtail the freedom with which they may be invoked has been unsuccessful.

In a number of states, however, the initiative procedure established in the constitutional provisions incorporating the initiative as a part of the state government tends to protect the state

against the adoption of wholly bad legislation. I refer to the indirect system of initiating as opposed to the direct.

Under the indirect initiative it is impossible to place a measure on the ballot by initiative petition, unless it has first been proposed to the legislature. If the measure is poorly drafted, the theory is that this fact will appear in the legislative discussion of it, and the result will be its decisive defeat at the polls. The states which restrict the initiative in this way are Maine, Michigan, Nevada, North Dakota, Ohio, and Washington. In these states the proponents of an initiative measure draft it, circulate their petition, and present it to the Secretary of State, whose duty it is promptly to refer the petition to the legislature. As a general rule the legislature is given 40 days in which to consider the measure. If the legislature enacts the measure as it stands the law is subject to referendum petition. It would, of course, require a separate referendum petition to bring it before the voters. If the legislature absolutely refuses to enact the measure as it stands, or in a modified form, in all of the states mentioned, except Ohio, it is the Secretary of State's duty to submit the measure to the voters at a subsequent election. If the legislature passes the law in a modified form, the general practice is to submit the amended measure and the initiated measure to the voters at the same time, and permit them to choose one or reject both of them. In Ohio when the legislature does not pass the proposed measure or passes it in modified form, a supplemental petition signed by electors who did not sign the original petition must request the submission of the proposed measure to the voters in order to have it placed on the ballot. If such a petition is circulated it may call for the submission of the initiated measure to the voters, having incorporated in it any amendments thereto which were introduced in the legislature.

Among the strongest objections which have been voiced against the initiative are that there is no opportunity for debate or deliberation upon initiated measures, and that the voters are often required to decide upon their adoption or rejection without having had any intelligent arguments either *pro* or *contra* to guide them. The indirect initiative certainly tends to avoid the dangers due to a lack of opportunity for debate and consideration involved in the use of the direct initiative, where the procedure is the drafting of the measure, the circulation of the petition, and the direct submission of the measure to the voters at a subsequent election.

It must be noted, however, that except in Ohio the indirect initiative is open to all the objections urged against the direct initiative, except that the legislative debate may bring before the public such objections to an initiated measure as to make its adoption practically impossible. In Ohio the provision which

permits the proponents of the measure to incorporate in it suggested changes introduced in the legislature is an intelligent plan to curtail the dangers of having poorly-drafted enactments written upon the statute books.

As previously stated, the adoption of the indirect plan of initiating measures is the only effort which has thus far been made to prevent badly drawn measures from being adopted. Obviously the precaution taken by this particular method of incorporating the initiative is very inadequate. But to any proposal that other safeguards be adopted, those responsible for the adoption of the initiative in any state always answer that initiative measures compare favorably with measures adopted by the legislature so far as draftsmanship is concerned. They point out that as a general rule the method of drafting measures of this sort is very much more careful than the method of drafting legislative measures, because the proponents of initiative measures are generally vitally interested in their adoption and will spare no effort to perfect them to the greatest possible extent before their proposal. Attention is called to such bodies as the People's Power League of Oregon and the Direct Legislation League of Colorado, both of which have proposed a comparatively large number of measures in their respective states. The Oregon People's Power League is constructed around Mr. W. S. U'Ren, whose intelligence and ability are not questioned even by his enemies. In the People's Power League an executive committee of about ten members plans the legislative campaign for any particular election. It rough-drafts the proposed measures and circulates them for suggestion and criticism. Subsequently, after the criticisms and suggestions have come in, the measure is gone over with a view to its technical perfection as well as to its improvement substantively. The measure is then brought directly before the voters inasmuch as Oregon has only the direct initiative. The Colorado Direct Legislation League is even more careful in its method of preparing measures. Under its constitution no measure can be initiated by the league unless it has been brought before three meetings of the entire membership of the league and passed three readings. In other words, the Colorado League is a voluntary legislature, all of whose members are presumably essentially interested in every measure which is proposed, because of the fact that an effort is made to have the league's endorsement of measures carry with it an assurance to the voters that the measure has been carefully considered and drawn, and is believed by the membership of the league to stand for sound principles, carefully and accurately expressed.

At the same time the most ardent friends of the initiative cannot deny the fact that although many measures are proposed by such bodies as the People's Power League and the Direct Legisla-

tion League, the initiative is open to all comers and any group or individual may place a measure on the ballot without having gone to any pains to have it skilfully prepared before its proposal.

As I understand the problem before your committee, it is the conception of a possible method of protecting the statute-books against ill-drafted initiative measures which may be written into law because of the fact that the large mass of voters are unable to determine for themselves whether a measure is well drawn or poorly drawn, technically speaking. There are several possible steps which may be taken in an effort to solve this problem. One possibility would be to require every initiated measure to be prepared by a state legislative reference bureau or drafting association, and to forbid the placing of any measure on the ballot not drawn by such an official department of the state government. To this suggestion the friends of the initiative would doubtless object that it is unfair to require the preparation of initiative measures in this way unless the same restriction is made to apply to measures introduced into the legislature. It would be contended, and could, doubtless, be proved, that the percentage of well-drafted initiative laws is as high, or higher, than the percentage of well-drafted measures introduced into the legislatures of the various states. The proposal would, therefore, be regarded as an ultra-conservative effort, not to assist the use of the initiative, but to throttle it.

If the suggestion of the Committee on Legislative Procedure of the Massachusetts Legislature should be adopted in states having the initiative, requiring every bill introduced into the legislature to have been prepared or revised by the state drafting bureau, there could certainly be no objection to requiring initiative measures to be prepared or revised by the same bureau prior to their initiation; and such a requirement should most assuredly be enacted into law.

If, however, it is not desirable to go so far as to require initiative measures to be prepared by a state drafting bureau, it would doubtless be possible to require state legislative reference bureaus to draft initiative measures if requested to do so by those proposing to place them on the ballot. This suggestion would not be open to the same objection as that previously mentioned. State legislative reference bureaus, as a general rule, are required to give members of the legislature any assistance requested, and to enlarge their sphere of activity by requiring them to prepare measures for those intending to use the initiative, could not be considered in any other light than as an effort to improve the quality of initiated measures.

What has heretofore been said referred to the initiation of laws as distinguished from amendments. The form of amendments is of even greater importance than the form of ordinary statutes.

The suggestion that legislative reference bureaus be empowered and instructed to give their services to proponents of laws, should also be extended to include proponents of amendments.

In all the states except one, in which the initiative may be used to propose amendments, there is nothing to safeguard against badly-drawn initiated amendments. The indirect initiative does not apply to amendments. At least no constitution includes in its detailed provisions for the indirect initiative terms which would make it applicable to constitutional amendments as well as to statutes.

In only one state has the initiative been incorporated in the constitution with a view to safeguarding against the adoption of ill considered amendments. The constitution of North Dakota requires that after a proposed amendment has been submitted to the voters it shall be referred to the next session of the legislature. If it is agreed to by a majority of all the members elected to each house, it becomes a part of the constitution. If it is not approved by the succeeding legislature, it shall be resubmitted to the people at the next general election, and if then approved by the voters it becomes a part of the constitution. This modification of the usual form of the initiative as applied to constitutional amendments, can result only in the absolute rejection of a measure, or a two years' delay in its approval. There is no possibility of altering its form during the course of the time in which it is to be considered by the legislature and the voters. This procedure merely brings the adoption of constitutional amendments under the initiative in line with the old-fashioned method of constitutional amendment, which required two successive legislatures to propose an amendment before its submission to the electorate. If this plan were accompanied by something analogous to the Ohio system, allowing the amendment to be modified on a second submission to the voters so that technical flaws might be corrected, something might be said in its favor. However, here, as in the matter of initiated laws, any restriction of this character would be looked upon as a thrust at the initiative in states in which constitutional changes may be made by popular vote upon a submission by one session of the legislature. It would, perhaps, be very much better to apply the principle of the indirect initiative for statutes, to amendments, requiring an amendment to go first to the legislature and then to the voters. Of course the legislature could not finally incorporate a proposed amendment into the constitution, but it could propose a modified form of amendment to accomplish the same result, to be simultaneously submitted to the voters when they are called upon to vote on the initiated measure. Under such a plan, the legislature could debate the proposal and expose any serious defects either in substance or in form.

To summarize, there seem to be but two feasible suggestions looking to the improvement of initiated laws and amendments. The indirect system of initiating should be established requiring both laws and amendments to go to the legislature before submission to the voters; and any state officer or bureau now authorized to assist the legislature in drafting measures, should be required to extend its aid to those desiring to use the initiative. Beyond this no practical suggestion occurs to the writer; but as the drafting of the legislative measures is aided and safeguarded by the extension of the duties and powers of legislative drafting bureaus, the same aids and safeguards should be applied to measures proposed under the initiative.

Respectfully submitted,

WM. A. SCHNADER.

REPORT

OF THE

COMMITTEE ON PUBLICATIONS.

(To be presented at the meeting of the American Bar Association, at Salt Lake City, Utah, August 17-19, 1915.)

To the American Bar Association:

The Committee on Publications submits the following report:

Pursuant to vote of the Executive Committee the publication of the AMERICAN BAR ASSOCIATION JOURNAL was commenced in 1915, and placed under the general supervision of your committee, and the editorial charge of its chairman. Three numbers have appeared (for January, April, and July) and we leave them to speak for themselves. It will be perceived that this new quarterly covers the ground previously occupied by the annual bulletin of the Bureau of Comparative Law, and the issue of such bulletin has been accordingly discontinued.

The committee would welcome suggestions at any time for the improvement of the JOURNAL, from any member of the Association.

All of which is respectfully submitted.

SIMEON E. BALDWIN, *Chairman.*

EIGHTH ANNUAL REPORT

OF THE

SPECIAL COMMITTEE TO SUGGEST REMEDIES AND FORMULATE PROPOSED LAWS TO PREVENT DELAY AND UNNECESSARY COST IN LITIGATION.

(To be presented at the meeting of the American Bar Association, at Salt Lake City, Utah, August 17-19, 1915.)

To the American Bar Association:

The special committee appointed at the meeting of this Association in 1907, and continued at each annual meeting since then, was charged with the duty of considering carefully alleged evils in judicial administration and remedial procedure, and suggesting remedies and formulating proposed laws.

1. Legislation in Congress.

1. *Law and Equity Bill.*—In accordance with the instructions received from the Association at the Washington meeting of 1914, your committee was heard before the Judiciary Committee of the Senate. The bill had passed the House of Representatives July 20, 1914. It was reported favorably in the Senate on the first day of March, 1915, with a slight amendment. This was to insert the words "if preserved" after the words "all testimony taken before such amendment" in the first section. This amendment was agreed to in the House and the bill was signed by the President and became a law March 3, 1915. A copy of this bill is appended and marked Schedule A.

2. *Bill for Review in Constitutional Cases.*—This bill passed the Senate January 21, 1914. Your committee was heard before the Judiciary Committee of the House of Representatives, which reported the bill favorably. It passed the House and became a law by the approval of the President on the 23d of December, 1914. A copy is appended and marked Schedule B.

We feel that the country is to be congratulated upon the passage of these two important bills. The first has already been availed of to simplify and expedite procedure. It is of far-reaching importance and removes an obstruction to the orderly course of justice which has hitherto been justly criticized.

3. *Reformed Procedure Bill.*—This bill was reported favorably in the House of Representatives as originally recommended by this Association, but when your committee was heard before the Judiciary Committee of the Senate objection was taken by Senators to the second paragraph of the bill, which read as follows:

"The trial judge may in any civil case submit to the jury in connection with the general verdict specific issues of fact arising upon the pleadings and evidence, reserving any question of law arising in the case for subsequent argument and decision, and he and any court to which the case shall thereafter be taken on writ of error shall have the power to direct judgment to be entered either upon the verdict or upon the special findings if conclusive upon the merits."

One of the objections was on the merits. The Senator making it had found in one of the states where the practice of submitting special questions to the jury prevailed, that so many questions were submitted that the jury were perplexed and confused. He thought the system worked badly. Another Senator had found in his state that the system worked well and favored it strongly, but in his opinion it was a matter that should be left to the regulation of each state. Under the Practice Act, the courts of the United States in each district follow as nearly as may be the local practice in the courts of the state. The Senator thought that in every state where this practice was approved and prevailed, the federal courts would follow it without any act of Congress and he was opposed to creating such a practice in states where the local sentiment was against it. We found that there was no probability of passing the bill if this paragraph were to remain in it. So after consultation with the Senators from New York, Mr. Root and Mr. O'Gorman, who both were much interested in the bill and supported it cordially, we came to the conclusion that it was advisable to make no objection to reporting the bill with the omission of this last paragraph. It was accordingly so reported in the House on the 12th of December, 1914. It went to the Senate and was reported favorably on the 5th of January, 1915. But the legislative time was so closely occupied with other legislation, particularly the shipping bill, that it became impossible to bring the bill to a vote without unanimous consent. Objection was made on the ground that the legislation was too important to go through without full consideration and the bill therefore

did not come to a vote. It is unnecessary for us to repeat the arguments which have been fully presented in previous reports in favor of the reform embodied in this third bill. We recommend that the committee be instructed to take measures to secure its introduction at the next session of Congress and to take such steps as it shall deem expedient to procure its passage. A copy is appended and marked Schedule C.

4. Your committee is of opinion that the proposition to provide a way in which in every circuit questions of fact can be submitted to the jury for special consideration and special verdict, should not be given up. But we think that the first part of the bill as proposed by the Association is so important that the two reforms should not be embodied in one bill. We therefore recommend for consideration to the Association a fourth bill which would provide a convenient method for taking a verdict upon specific questions of fact arising on the trial, and thereby enabling the appellate court to dispose of the case finally without the delay and expense of a new trial. This proposed bill is marked Schedule D.

In the Commonwealth of Massachusetts an act has been passed which was approved April 19, 1915, which provides for an alternative verdict. This was drawn with reference to the decision of the United States Supreme Court in Slocum *vs.* New York Life Insurance Co., 228 U. S. 364. This subject of an alternative verdict has been discussed before the Judiciary Committee of the House of Representatives. It was not then received with favor and your committee is of opinion that it would be inadvisable to attempt to bring this particular measure before the attention of Congress at present. We however submit for the information of the Association a copy of the bill referred to, which is marked Schedule E.

We have been unable to interest Congress in the bill providing for a reduction of the fees and mileage of United States marshals, which was Schedule E in our report presented in October last.

Your committee recommend for adoption the following resolution:

Resolved, That the Special Committee to Suggest Remedies and Formulate Proposed Laws be continued with the powers heretofore conferred upon it, and that it be instructed to take

such steps as it shall deem expedient to procure the passage of the bill, of which a copy is annexed to this report and marked Schedule C, and also the bill in relation to the fees and mileage of United States marshals referred to in the report of which a copy marked Schedule E was annexed to the report presented in October.

EVERETT P. WHEELER, *Chairman,*
SAMUEL C. EASTMAN,
ROSCOE POUND,
FRANK IRVINE,
HENRY D. ESTABROOK,
R. E. L. SANER,
H. B. F. MACFARLAND,
EDGAR A. BANCROFT,
J. G. SLONECKER,
PAUL HOWLAND,
JOHN D. LAWSON,
ADELBERT MOOT,
ALBERT C. RITCHIE,
FREDERICK A. FENNING.

SCHEDULE A.

AN ACT

TO AMEND AN ACT ENTITLED "AN ACT TO CODIFY, REVISE AND AMEND THE LAWS RELATING TO THE JUDICIARY," APPROVED MARCH 3, 1911.

Be it enacted by the Senate and House of Representatives in Congress assembled, That the act entitled "An act to codify, revise and amend the laws relating to the judiciary, approved March 3, 1911, be, and the same is hereby, amended by inserting after section 274 thereof three new sections, to be numbered, respectively, 274a, 274b and 274c, reading as follows:

"SEC. 274a. That in case any of said courts shall find that a suit at law should have been brought in equity or a suit in equity should have been brought at law, the court shall order any amendments to the pleadings which may be necessary to conform them to the proper practice. Any party to the suit shall have the right, at any stage of the cause, to amend his pleadings so as to obviate

the objection that his suit was not brought on the right side of the court. The cause shall proceed and be determined upon such amended pleadings. All testimony taken before such amendment, if preserved, shall stand as testimony in the cause with like effect as if the pleadings had been originally in the amended form.

"SEC. 274b. That in all actions at law equitable defenses may be interposed by answer, plea or replication without the necessity of filing a bill on the equity side of the court. The defendant shall have the same rights in such case as if he had filed a bill embodying the defense or seeking the relief prayed for in such answer or plea. Equitable relief respecting the subject matter of the suit may thus be obtained by answer or plea. In case affirmative relief is prayed in such answer or plea, the plaintiff shall file a replication. Review of the judgment or decree entered in such case shall be regulated by rule of court. Whether such review be sought by writ of error or by appeal the appellate court shall have full power to render such judgment upon the records as law and justice shall require.

"SEC. 274c. That where, in any suit brought in or removed from any state court to any district court of the United States, the jurisdiction of the district court is based upon the diverse citizenship of the parties, and such diverse citizenship in fact existed at the time the suit was brought or removed, though defectively alleged, either party may amend at any stage of the proceedings and in the appellate court upon such terms as the court may impose, so as to show on the record such diverse citizenship and jurisdiction, and thereupon such suit shall be proceeded with the same as though the diverse citizenship had been fully and correctly pleaded at the inception of the suit, or, if it be a removed case, in the petition for removal."

Approved March 3, 1915.

SCHEDULE B.

AN ACT

TO AMEND AN ACT ENTITLED "AN ACT TO CODIFY, REVISE AND AMEND THE LAWS RELATING TO THE JUDICIARY," APPROVED MARCH 3, 1911.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 237 of chapter 10 of an act entitled "An act to codify, revise and amend the laws relating to the judiciary," approved

March 3, 1911, is hereby amended by adding thereto the following:

"It shall be competent for the Supreme Court to require, by certiorari or otherwise, any such case to be certified to the Supreme Court for its review and determination, with the same power and authority in the case as if it had been carried by appeal or writ of error to the Supreme Court, although the decision in such case may have been against the validity of the state statute or authority claimed to be repugnant to the constitution, treaties or laws of the United States, or in favor of the title, right, privilege or immunity claimed under the constitution, treaty, statute, commission or authority of the United States."

Approved December 22, 1914.

SCHEDULE C.

SIXTY-THIRD CONGRESS, THIRD SESSION. CALENDAR NO. 745.
H. R. 12750 (REPORT NO. 853).

IN THE SENATE OF THE UNITED STATES.

DECEMBER 17, 1914.

Read twice and referred to the Committee on the Judiciary.

January 5, 1915. Reported by Mr. O'Gorman, without amendment.

A BILL

RELATING TO PROCEDURE IN UNITED STATES COURTS.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 269 of the Judicial Code, approved March 3, 1911, be, and the same is hereby, amended by adding at the end thereof the following:

"No judgment shall be set aside or reversed or a new trial granted by any court of the United States in any case, civil or criminal, on the ground of misdirection of the jury or the improper admission or rejection of evidence, or for error as to any matter of pleading or procedure, unless in the opinion of the court to which application is made, after an examination of the entire cause, it shall appear that the error complained of has injuriously affected the substantial rights of the parties."

SCHEDULE D.

AN ACT

RELATING TO PROCEDURE IN UNITED STATES COURTS.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 269 of the Judicial Code, approved March 3, 1911, as amended by the Act of Congress approved March 3, 1915, be, and the same is hereby, amended by adding at the end of section 274c the following:

"SEC. 274d. At the trial of an issue of fact by a jury in any civil proceeding, when the determination of the matters in controversy or any of them shall depend on some question or questions of law raised at the trial, it shall be the duty of the judge, by putting particular questions of fact to the jury or otherwise, to ascertain the facts necessary to enable the court finally to determine the said matters according to any decision that may be made of the questions of law, unless in the opinion of the judge such a course is unnecessary or inexpedient in the circumstances of the case. And the court upon an application for judgment, if satisfied that it has before it all the material necessary for determining the said matters or any of them, may give judgment accordingly. But, if it shall be of opinion that it has not sufficient material to enable it to give judgment as to such matters or some of them, it may direct that the application stand over for further consideration and may grant leave to either party to introduce and put into the record additional documentary evidence as to which no question of fact arises, and may, while retaining the verdict originally rendered, order a trial by jury of any questions of fact which the court shall decide are material and which were not disposed of upon the first trial. Upon the said new evidence or the verdicts upon such trials the trial court or the appellate court shall have power to render final judgment and to make any such further order as the case may require."

SCHEDULE E.

COMMONWEALTH OF MASSACHUSETTS.

AN ACT

TO AMEND JUDICIAL PROCEDURE IN RESPECT TO PRACTICE AT TRIALS.

SECTION 1. Chapter 173 of the Revised Laws is hereby amended by striking out section 120 and inserting in place thereof the following: Section 120. When exceptions to any ruling or direction of a judge shall be alleged, or any question of law shall be reserved, in the course of a trial by jury, and the circumstances shall be such that, if the ruling or direction at the trial was wrong, the verdict or finding ought to have been entered for a different party or for larger or smaller damages or otherwise than as was done at the trial, the judge may reserve leave, with the assent of the jury, so as to enter the verdict or finding, if upon the question or questions of law so raised the court shall decide that it ought to have been so entered. The leave reserved, as well as the findings of the jury upon any particular questions of fact that may have been submitted to them, shall be entered in the record of the proceedings, and, if upon the question or questions of law it shall be decided, either by the same court, or by the appellate court, that the verdict or finding ought to have been entered in accordance with the leave reserved, it shall be entered accordingly and, when so entered, shall have the same effect as if it had been entered at the trial.

SEC. 2. Nothing herein contained shall be so construed as to limit the powers of the court conferred by chapter 236 of the acts of the year 1909 or by chapter 716 of the acts of the year 1913.

Approved April 19, 1915.

REPORT

OF THE

SPECIAL COMMITTEE TO REPORT ON REORGANIZATION

(To be presented at the meeting of the American Bar Association, at Salt Lake City, Utah, August 17-19, 1915.)

To the American Bar Association:

Your undersigned special committee, appointed at the Montreal meeting, in 1913, to report on reorganization and methods of business of the Association, have conducted considerable correspondence during the past year with the Vice-Presidents of the Association for the several states, and with the Presidents of State Bar Associations, in order to find out what views are entertained in these representative quarters as to the subject assigned to this committee. The views were sought by means of a questionnaire, a copy of which is subjoined. The replies received disclose a wide diversity of views on all these topics. It is obvious that the subject assigned to this committee has been a frequent matter for serious reflection to a great many members of the Association. Your committee has exchanged views by correspondence during the year with its different members and has had two or three personal conferences. Thus far your committee has reached no conclusion, except as stated below. This was partly for the reason that the work of obtaining the views from representative members of the Association has proceeded very slowly; and your committee feels that it should in this respect not endeavor to bring its own views to an issue, until it has satisfied itself as to the support which various proposed measures might receive from the public opinion of the Association.

For that purpose, moreover, your committee desires to elicit further reflection and expression of views from members of the Association generally, and, with that view, has compiled in some appendices a collection of materials which will stimulate reflection. After these materials have been published and circulated in the October (1915) number of the JOURNAL of the Association, it will be in order for this committee to endeavor to reach some final conclusion on the topics discussed. Your committee

therefore reports progress, with the expectation that it will be able to submit a final report to the Executive Committee in ample season before the annual meeting of 1916.

On a single matter your committee has already reached a conclusion, viz., that the time allowed for the various meetings that are now held in connection with the annual meeting is too short. It recommends that the Association revert to the old practice, which occasionally obtained up to about eighteen years ago, of allotting *four* entire days to the annual meeting, instead of three entire days, as at present. A glance at the programs of the 1914 and 1915 meetings shows that out of nine units of time (morning, afternoon and evening) represented by the three days, less than three units in all were allotted to the hearing and deliberation on the reports of sixteen standing committees and eight special committees, as well as miscellaneous business—an amount of time wholly inadequate. Moreover, of the four sections of the Association, only one unit of time is generally allotted to each, and all four are usually made to meet simultaneously. In these and other ways there is evidently a need for the enlargement of the total time from three days to at least four days.

In view of the necessity of making arrangements for the meeting in 1916, your committee respectfully recommend that the Executive Committee elected in August, 1915, follow the above recommendation, in making plans for the annual meeting of 1916.

Respectfully submitted,

JOHN H. WIGMORE, *Chairman.*
JACOB M. DICKINSON,
STEPHEN S. GREGORY,
WALTER GEORGE SMITH,
FRANCIS RAWLE.

QUESTIONNAIRE.

A. EXTENSION OF MEMBERSHIP.

(a) 1. Do you believe that the American Bar Association membership should be enlarged, and how far?

(b) 1. Do you believe that the organization of the American Bar Association membership is inadequate, and if so, in what way?

2. Do you believe that some sort of a federation of the membership (like that of the American Medical Association) for National, State, County and City Associations, is desirable; and if so, by what method?

3. Apart from the specific measure of federation, what additional or alternative measures do you propose for extension of membership, for relation of membership to the Bar at large, and for handling of membership on a large scale?

B. Improvement of Procedure.

(a) What are your views as to the shortcomings, if any, in the present method of committee deliberations, in respect to securing thorough consideration and finality of settlement of the topics committed? And what proposals, if any, do you offer for improvement?

(b)(c) What are your views as to the shortcomings, if any, in the present method of discussing and settling the recommendations of committees at the annual meeting? And what proposals, if any, do you offer for improvement?

(d) What are your views as to the shortcomings, if any, of the present method of dealing with resolutions or measures approved at the annual meeting, and affecting the law or procedure, or other matters, in such a way as to call for later action by some agency of the Association? And what proposals, if any, do you offer for improvement?

(e) If you favor some change, what proposal, if any, do you make for separating the internal management of the Association, the financial affairs, and the purely professional or legal views, of the Association, on lines analogous to those adopted by the American Medical Association in 1902?

(f) What additional or alternative measures of any sort do you propose for this general purpose of improving the Association's method of transacting business?

REPORT

OF THE

COMMITTEE ON UNIFORM JUDICIAL PROCEDURE.

(To be presented at the meeting of the American Bar Association, at Salt Lake City, Utah, August 17-19, 1915.)

To the American Bar Association:

The Committee on Uniform Judicial Procedure respectfully reports:

Since the last meeting of the Association, such a strong and wholesome sentiment has manifested itself in favor of the American Bar Association's program for the modernization and uniformity of the procedure of the courts, as to justify the belief that there will be a full appreciation by Congress of the merits of the movement.

The American Bar Association's Program.

A fixed program, which had been under consideration for several years, took final and definite form at the Boston meeting in 1910. A condition precedent to its actual achievement was suitable power in the Federal Supreme Court to prepare and put into effect a complete system of rules for the regulation of the *nisi prius* courts. This idea reflects the organic principle of a division of duties between the legislative and judicial departments of government. It involves the idea of court rules, as to details, and legislative control as to fundamental and jurisdictional matters and all questions of permanent procedure and evidence, the latter to be embraced in a short practice code. The result will be the lodging of the responsibility for operation by Congress with the courts. The fact is becoming very generally understood that, although the courts and lawyers are now solely held responsible for juridical defects, the Congress regulates their entire conduct; that the judge is often helpless to prevent injustice being done in his very presence; and the lawyer, by force of these rigid statutes, is compelled to take advantage of technicalities, for he may not draw a distinction between the adjective and substantive law.

THE REASON FOR ITS POPULARITY.

Other elements of the popularity of the American Bar Association's program are that form is sacrificed for principle and that the Supreme Court, which will be ready to hear from lawyers and judges practical suggestions as experience may develop them, can from time to time change the system of rules in response to the call of convenience or justice. Obviously, failure or delay in correcting abuses has done more to prejudice the laity against the courts and lawyers than any other juridical element. The test of any permanent institution is its ability to adapt itself promptly to changing conditions.

AN EXAMPLE OF UNSELFISH PATRIOTISM.

The sentiment of the American Bar Association has been practically unanimous in support of this program and many earnest lawyers and judges are militantly pushing it. Forty-two State Bar Associations have endorsed it and many have special state committees working harmoniously with your committee. They have suppressed all pride of opinion and agreed to depart from long established customs and usages in the interest of the general welfare and, thereby, have made possible a new and wholesome era of judicial relations. It became manifest that the lawyers must modernize the machinery of the courts or it would be done by some less competent agency.

PROGRESS WITH CONGRESS.

It appearing that the 63d Congress would adjourn immediately upon the completion of a legislative program upon which it had been almost uninterruptedly engaged, attention was given to preparation for the 64th Congress and to harmonizing other bills concerning the courts that were found to be pending. To that end a resolution (Senate Resolution 552) appended hereto, was adopted by the Senate, authorizing a sub-committee of the Judiciary Committee of the Senate to consider in vacation a composite bill passed by the House of Representatives in the last preceding session. (H. R. 15578.) Your committee will appear before this sub-committee for the purpose of impressing the principles underlying the American Bar Association's program. It

is respectfully suggested that full authority be given this committee in the premises. It will serve a useful purpose to comment briefly on the bill (H. R. 15578) if, by that means, individual representations are caused to be made to members of Congress.

H. R. 15578.

Its title is "An Act to Codify, Revise and Amend the Laws Relating to the Judiciary." It is 206 pages long; is officially designated as "Judicial Code, Part 2," but will, no doubt, be popularly known as "The Practice Code," and should be so designated. It deals with the following subjects:

1. District Attorneys, Marshals, Clerks, Commissioners, and Stenographers.
2. Pay and Allowances of Court Officers, Jurors and Witnesses.
3. Evidence.
4. Civil Procedure.
5. Criminal Procedure.
6. Procedure on Error and Appeal.
7. Judgments, Cost, and Executions.
8. Limitations.
9. Habeas Corpus.
10. Extradition.

Some Recommendations.

It would not be practical to discuss in detail the features of so lengthy a bill. Admitting the necessity for a measure of its general character, certain alterations appeal so strongly that they are briefly mentioned:

Sec. 168. Omit the words "By the said courts, respectively," and "to any District Court."

Reason. Uniformity requires one general source of power. Special rules for special localities or conditions can be provided by the Supreme Court upon suitable representation in that behalf.

Sec. 169a. This section forbids the judge to "sum up" the evidence and should be omitted.

Sec. 169b. Arbitrarily requires submission of all issues to the jury regardless of the state of the evidence and should be omitted.

Reason. Permission is asked, however, to say that the judge ought to be empowered to save the time and expense caused by

cases improvidently and improperly brought so as to prevent their going to the jury. Where the evidence is insufficient to support a verdict, the court of necessity would set it aside. It is therefore thought expedient to permit the judge to act before instead of after submitting the case. This is the practice in North Carolina and New York.

SEC. 171. Omit entirely and substitute the American Bar Association's Bill, H. R. 133, a copy of which is attached hereto.

Reason. This bill has met with practically the unanimous support of the American Bar Association and of over 40 State Bar Associations. Its object is to vest in the Supreme Court the same power on the law side of the court that it now possesses on the equity side; to prepare and put into effect a correlated system of rules for the guidance of the trial courts and the detail machinery thereof. It is conceded that the effort at conformity with state practice (Sec. 914 R. S.) is a failure and has become a menace to the administration of justice. The legislative department should enact all statutes concerning jurisdictional and fundamental matters and matters of evidence and of permanent procedure, but the detail operation of the court should be regulated by rules prepared by the Supreme Court. The Supreme Court would amend these rules from time to time as occasion required without having to wait upon or to disturb Congress to enact a statute.

SEC. 180. Insert the words " Provided by the Supreme Court " after the words, " By general rules " and before the words " adopt such " in the eleventh line.

Reason. These amendments make the section consistent with the general principle laid down in Sec. 171 requiring the Supreme Court to make all rules.

SEC. 181. Omit the words " Of such District Court " and insert the word " Such " just before the words " general rules " in the twenty-third line. Omit the words " by general rules " in the twenty-fourth line and insert in lieu thereof the words " in the manner aforesaid."

SEC. 183. Omit entirely. See comments on Sec. 171 and Sec. 180. Uniformity requires that there shall be a single power for making rules. Upon the necessity arising, the Supreme Court will *make all necessary exceptions* and it will *prevent unnecessary exceptions.* This involves the great principle upon which the American Bar Association is practically unanimous.

SEC. 186. Omit the words " The Court may make," in the eleventh line and insert the words " may be made " in the twelfth line, between the words " therein " and " as."

Reason. These alterations harmonize these sections with Sec. 171 as to rule making power and yet leaves the trial court free to

act by way of an "order." The statute does not forbid the exercise of this power by the court and it meets every requirement.

SEC. 189. Insert in line twelve, the word "Supreme" between the words "the" and "Court" and insert in the same line the words "by rule" between the word "direct" and the period.

Reason. This, for the reasons given above, harmonizes the entire statute.

SEC. 218. Change the word "four" in the twenty-sixth line, to "thirty"; and the word "months," in the first line of page 127 to "days"; and add the words, "*provided, that nothing shall prevent such time being extended by the court or the Judge therof by an order duly entered of record for an additional period of sixty days for good and sufficient reasons to be incorporated in such order.*"

Reason. Litigants are justly complaining of the delay and expense occasioned by appeals. Sec. 218 aggravates this condition. Thirty days is the greatest sufficiency of time in which to prepare simple *bills of exceptions.* It must be borne in mind *that additional time will still be required to make up the record.* The amendment suggested serves two purposes, viz: (1) Counsel will be forced to act with reasonable promptness while the facts are yet fresh in the minds of the necessary participants. (2) It will *force counsel, seeking a delay, to place upon the record his reasons therefor,* thus permitting the responsibility to rest where it properly belongs. The legislative policy, as evidenced by Sec. 226 of H. R. 15578, is to hold counsel responsible in all proper instances. This is to be highly commended.

SEC. 219. Omit the words "its rules," in line eleven, page 128, and insert in place thereof the words "rules of court."

Reason. This, for the reasons above named, brings it into harmony with the entire act.

* * *

SEC. 322. It is respectfully suggested that forty-two days is too long a time for the simple purpose of *moving for a new trial.* This ought to be done with the utmost speed, and the record should evidence reasons for any delay.

Memo. It is suggested that the act should be known as "The Practice Code" instead of "The Judiciary Bill, 2d Part."

Memo. Time and *economy,* in the order named, are among the most important of juridical elements. There is justification for the prediction that any effort at juridical reform not reflecting these fundamental principles will prove a failure; that any effort wholly omitting them will destroy the present weakened faith in the courts. The public, within the last few years, has been educated to expect speed and economy in the courts; that the judges are helplessly restricted by iron bound statutes and that relief can

be had only from Congress. These things, as a matter of growing expediency apart from the great principles involved, recommend conformity to the suggestions made.

All provisions in the bill which attempt in any way to impose a limitation upon injunctions other than those contained in the Clayton Bill, should of course be omitted.

The Judicial Section.

Travel Expense.—It is gratifying to report the success of the annual *Conference of Judges,* the first since the preliminary organization at Montreal, having been held at Washington, D. C., in October, 1914. The interesting proceedings have been published. The travel expense of the State Commissioners on Uniform Laws is generally defrayed by the respective states. Such action should be taken as to assure similar legislative appropriations for the chief justices. Your committee has undertaken with gratifying success, to induce leading members of the Bar of each state to take concerted action, but it is hoped that every member of the Association will assist in such manner as recommends itself to his good judgment. The governors of the several states are being requested to recommend an annual appropriation of from $100 to $250. *This is a small premium for a state to pay for insurance against conflicting judicial opinions.* The broadening, liberalizing and uplifting influence of this annual exchange of views means much to the nation.

Uniformity of Interpretation.—One of the principal purposes of this organization is to correct the evil of conflict of decisions and it is being greatly aided by the Commissioners on Uniform State Laws, through a Reference Bureau, that furnishes ready reference to all conflicting opinions on a given subject but without further comment. Such conduct connotes a greatly needed harmony.

Uniformity of Procedure.—Through rules prepared and promulgated by the federal Supreme Court uniformity of procedure can be secured better than through a statutory system of pleading and procedure. It is of first importance to do away with rigid statutes in this respect entirely, except acts authorizing the respective and highest state appellate courts to adopt a system of rules for pleading and procedure. Through the Conference of

Judges such uniformity may be brought about. This is but another link in the American Bar Association's plan leading to uniformity of law, of interpretation and of procedure.

Respectfully submitted,

THOMAS W. SHELTON, *Chairman.*
JACOB M. DICKINSON,
WILLIAM HOWARD TAFT,
JOSEPH N. TEAL,
LAWRENCE MAXWELL.

APPENDIX A.

IN THE HOUSE OF REPRESENTATIVES.

APRIL 7, 1913.

Mr. Clayton introduced the following bill; which was referred to the Committee on the Judiciary and ordered to be printed. March 27, 1914: Reported with amendments, referred to the House Calendar, and ordered to be printed.

A BILL

TO AUTHORIZE THE SUPREME COURT TO PRESCRIBE FORMS AND RULES AND GENERALLY TO REGULATE PLEADING, PROCEDURE, AND PRACTICE ON THE COMMON-LAW SIDE OF THE FEDERAL COURTS.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Supreme Court shall have the power to prescribe, from time to time and in any manner, the forms and manner of service of writs and all other process; the mode and manner of framing and filing proceedings and pleadings; of giving notice and serving process of all kinds; of taking and obtaining evidence; drawing up, entering, and enrolling orders; and generally to regulate and prescribe by rule the forms for the entire pleading, practice, and procedure to be used in all actions, motions, and proceedings at law of whatever nature by the district courts of the United States *and the District of Columbia.*

SEC. 2. *When and as the rules of court herein authorized shall be promulgated, all laws in conflict therewith shall be and become of no further force and effect.*

APPENDIX B.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 19, 1915.

Mr. Culberson submitted the following resolution; which was referred to the Committee to Audit and Control the Contingent Expenses of the Senate. February 19 (calendar day, March 1), 1915: Reported by Mr. Shafroth, with an amendment; considered, amended, and agreed to.

RESOLUTION.

Resolved, That the Committee on the Judiciary be authorized to appoint a subcommittee thereof to consider, in the interval between the 63d Congress and the first session of the 64th Congress, or during a session or recess of the 64th Congress, the proposed codification, revision, and amendment of the laws relating to the judiciary contemplated in the bill (H. R. 15578) passed by the House of Representatives in the last preceding session, and that such subcommittee be authorized to employ and compensate such persons as may be found necessary to assist in any work arising in connection with such consideration, the expenses thereby incurred to be paid out of the contingent fund of the Senate upon vouchers to be approved by the chairman of the subcommittee and not to exceed in the total $500.

REPORT

OF THE

COMMITTEE ON UNIFORM STATE LAWS.

(To be presented at the meeting of the American Bar Association, at Salt Lake City, Utah, August 17-19, 1915.)

To the American Bar Association:

Your Committee on Uniform State Laws has the honor to report its activities for the year last passed as follows:

First: The members of your committee availing themselves of the continued and painstaking efforts of the Conference of Commissioners on Uniform State Laws, with which they are closely affiliated, and some of whose commissioners are members of this committee, have grasped all the opportunities which presented themselves to bring about uniformity of statutory laws throughout the country, and with corresponding zeal have put forth increased endeavors to bring to the attention of the courts of record throughout the various states, the purposes which the Conference of Commissioners and this Committee on Uniform State Laws are serving, to the end that the courts having in mind their accomplishment, might apply in the rendition of their decisions, such rules of interpretation and take such cognizance of the decisions of other states, than their own, under the various provisions of the uniform acts, as will be most calculated to carry forward the general principle of uniformity.

Second: The fact that the committee has presented for your consideration four new uniform acts, is due to the gratifying consummation of the work of the Conference of Commissioners on Uniform State Laws, and of your committee, extending over periods ranging from two years in the case of the Uniform Cold Storage Act to 12 years in the case of the Uniform Partnership Act. In the consideration, study and discussion of the Uniform Partnership Act, Uniform Workmen's Compensation Act, Uniform Cold Storage Act, Uniform Act Relating to the Acknowledgment of Deeds and other Instruments taken Outside the United States, with substantial continuity during the periods above defined, your committee and the Conference have enjoyed

the benefit of the services not only of the specially appointed official representatives of the various states, but of many business men of affairs and other lawyers especially interested in, and conversant with, the various subjects dealt with in the respective acts. Pursuant to regular and usual procedure, invitations have been extended by the various committees of the Conference of Commissioners to all those who might by certainty, or by any chance, have a special knowledge or experience to impart to the sub-committee having these matters in charge. The caution and painstaking thoroughness with which the work of the Conference of Commissioners and of your committee has been prosecuted, is, as it would seem, amply disclosed by a reference to the fact that your committee has not given its final approval to any of the four acts in question, until years of study, investigation and discussion had been employed upon each and every one of them.

Your committee extends to you, therefore, the assurance that the acts as now presented to you, represent the mature judgment, best experience, conscientious effort and ripe conclusions, seasoned by the time which had been allowed to lapse since their initiation. In order that the results of these efforts may be presented to you in concrete form, copies of the said four uniform acts are annexed hereto, and marked, respectively, "Exhibit A," "Exhibit B," "Exhibit C" and "Exhibit D."

Third: It may be of interest to this Association to note that the first uniform act approved by this body has now been adopted in 47 states, territories, federal districts and possessions.

Fourth: There has been adopted the Uniform Warehouse Receipts Act in 31 states, territories, federal districts and possessions, and since the last meeting of this Association, one additional state has adopted the Uniform Sales Act, making the number of states, territories, federal districts and possessions which have put this act upon their statute books 12.

Fifth: Similar and commensurate progress has been made in the adoption by the various states of the Stock Transfer Act, Bills of Lading Act and Child Labor Act.

Sixth: As was to be expected, the apparent progress of the work of your committee has been much more rapid in the last four or five years, than in the whole of its preceding history of about 20 years. It was to be expected that much patience and apparently unrewarded endeavor would have to be expended in

preparing the ground. It was a long, tedious, and oftentimes discouraging work to induce the various legislatures throughout the country to recognize the importance of the movement for uniformity, and thereafter to avail themselves of the drafts of acts produced as a result of the labors of your committee in this behalf. It may now, however, with confidence, be said that the movement has met with general and thoroughgoing approval throughout the country, an approval which is manifested in many ways, and not least by the cordial commendation given to the uniform acts by judges throughout the country in their opinions on cases which have been before them in the last three or four years for their determination.

Seventh: Much has been done, but much remains to be accomplished, and your committee very earnestly bespeaks continued co-operation of every member of this Association, wherever he may be practising his chosen profession, in the effort which we are making to bring about uniformity, both by statutory enactment and judicial decision.

Eighth: Your committee, therefore, recommends the adoption of the following resolution:

Resolved, That the Uniform Partnership Act, the Uniform Workmen's Compensation Act, the Uniform Cold Storage Act, and the Uniform Act Relating to the Acknowledgment of Deeds and other Instruments taken Outside the United States, having been heretofore approved and recommended by the Conference of Commissioners on Uniform State Laws, be, and the same are hereby approved by this body, and recommended to the legislatures of the various states for enactment into law.

All of which is respectfully submitted.

CHARLES THADDEUS TERRY, *Chairman,* New York, N. Y.,
FREDERICK G. BROMBERG, Mobile, Ala.,
ROYAL A. GUNNISON, Juneau, Alaska,
M. G. CUNNIFF, Phoenix, Ariz.,
GEORGE B. ROSE, Little Rock, Ark.,
CHARLES MONROE, Los Angeles, Cal.,
HARRY EUGENE KELLY, Denver, Col.,
WALTER E. COE, Stamford, Conn.,
DAVID T. MARVEL, Wilmington, Del.,
CHARLES W. NEEDHAM, Washington, D. C.,
WILLIAM A. BLOUNT, Pensacola, Fla.,
JOS. HANSELL MERRILL, Thomasville, Ga.,

DAVID L. WITHINGTON, Honolulu, Hawaii,
FREMONT WOOD, Boise, Idaho,
ERNST FREUND, Chicago, Ill.,
MERRILL MOORES, Indianapolis, Ind.,
JERRY B. SULLIVAN, Des Moines, Iowa,
CHARLES W. SMITH, Stockton, Kans.,
EDMUND F. TRABUE, Louisville, Ky.,
W. O. HART, New Orleans, La.,
P. H. GILLIN, Bangor, Me.,
HENRY STOCKBRIDGE, Baltimore, Md.,
SAMUEL WILLISTON, Cambridge, Mass.,
GEORGE W. BATES, Detroit, Mich.,
CORDENIO A. SEVERANCE, St. Paul, Minn.,
A. T. STOVALL, Okolona, Miss.,
SENECA N. TAYLOR, St. Louis, Mo.,
C. B. NOLAN, Helena, Mont.,
JOHN L. WEBSTER, Omaha, Neb.,
A. E. CHENEY, Reno, Nev.,
JOSEPH MADDEN, Keene, N. H.,
JOHN R. HARDIN, Newark, N. J.,
JAMES G. FITCH, Socoro, N. M.,
J. CRAWFORD BIGGS, Raleigh, N. C.,
ANDREW A. BRUCE, Bismarck, N. D.,
A. V. CANNON, Cleveland, Ohio,
D. A. MCDOUGAL, Sapulpa, Okla.,
CHARLES H. CAREY, Portland, Ore.,
JESSE H. WISE, Pittsburgh, Pa.,
MANUEL RODRIGUEZ-SERRA, San Juan, P. R.,
THOMAS A. JENCKES, Providence, R. I.,
T. MOULTRIE MORDECAI, Charleston, S. C.,
U. S. G. CHERRY, Sioux Falls, S. D.,
HENRY H. INGERSOLL, Knoxville, Tenn.,
HIRAM GLASS, Austin, Tex.,
P. L. WILLIAMS, Salt Lake City, Utah,
GEORGE B. YOUNG, Newport, Vt.,
EUGENE C. MASSIE, Richmond, Va.,
CHARLES E. SHEPARD, Seattle, Wash.,
EDGAR B. STEWART, Morgantown, W. Va.,
EDWARD W. FROST, Milwaukee, Wis.,
CHARLES N. POTTER, Cheyenne, Wyo.

EXHIBIT A.

AN ACT

To Make Uniform the Laws of Partnership.*

PART I.

PRELIMINARY PROVISIONS.

Section 1. [Name of Act.] This act may be cited as Uniform Partnership Act.

Sec. 2. [Definition of Terms.] In this act, "Court" includes every court and judge having jurisdiction in the case.

"Business" includes every trade, occupation, or profession.

"Person" includes individuals, partnerships, corporations, and other associations.

"Bankrupt" includes bankrupt under the Federal Bankruptcy Act or insolvent under any state insolvent act.

"Conveyance" includes every assignment, lease, mortgage, or encumbrance.

"Real property" includes land and any interest or estate in land.

Sec. 3. [Interpretation of Knowledge and Notice.] (1) A person has "knowledge" of a fact within the meaning of this act not only when he has actual knowledge thereof, but also when he has knowledge of such other facts as in the circumstances shows bad faith.

(2) A person has "notice" of a fact within the meaning of this act when the person who claims the benefit of the notice

(*a*) States the fact to such person, or

(*b*) Delivers through the mail, or by other means of communication, a written statement of the fact to such person or to a proper person at his place of business or residence.

Sec. 4. [Rules of Construction.] (1) The rule that statutes in derogation of the common law are to be strictly construed shall have no application to this act.

* This Act in pamphlet form with explanatory notes may be obtained from Walter George Smith, Land Title Building, Philadelphia, Pa., Chairman of the Committee on Commercial Law of the Commissioners on Uniform State Laws, or from George B. Young, Newport, Vt., Secretary of the Commissioners on Uniform State Laws.

(2) The law of estoppel shall apply under this act.

(3) The law of agency shall apply under this act.

(4) This act shall be so interpreted and construed as to effect its general purpose to make uniform the law of those states which enact it.

(5) This act shall not be construed so as to impair the obligations of any contract existing when the act goes into effect, nor to affect any action or proceedings begun or right accrued before this act takes effect.

SEC. 5. [Rules for Cases not Provided for in this Act.] In any case not provided for in this act the rules of law and equity, including the law merchant, shall govern.

PART II.

NATURE OF A PARTNERSHIP.

SEC. 6. [Partnership Defined.] (1) A partnership is an association of two or more persons to carry on as co-owners a business for profit.

(2) But any association formed under any other statute of this state, or any statute adopted by authority, other than the authority of this state, is not a partnership under this act, unless such association would have been a partnership in this state prior to the adoption of this act; but this act shall apply to limited partnerships except in so far as the statutes relating to such partnerships are inconsistent herewith.

SEC. 7. [Rules for Determining the Existence of a Partnership.] In determining whether a partnership exists, these rules shall apply:

(1) Except as provided by section 16 persons who are not partners as to each other are not partners as to third persons.

(2) Joint tenancy, tenancy in common, tenancy by the entireties, joint property, common property, or part ownership does not of itself establish a partnership, whether such co-owners do or do not share any profits made by the use of the property.

(3) The sharing of gross returns does not of itself establish a partnership, whether or not the persons sharing them have a joint or common right or interest in any property from which the returns are derived.

(4) The receipt by a person of a share of the profits of a business is *prima facie* evidence that he is a partner in the business, but no such inference shall be drawn if such profits were received in payment:

(*a*) As a debt by installments or otherwise,

(*b*) As wages of an employee or rent to a landlord,

(*c*) As an annuity to a widow or representative of a deceased partner,

(*d*) As interest on a loan, though the amount of payment vary with the profits of the business,

(*e*) As the consideration for the sale of the good-will of a business or other property by installments or otherwise.

SEC. 8. [Partnership Property.] (1) All property originally brought into the partnership stock or subsequently acquired, by purchase or otherwise, on account of the partnership is partnership property.

(2) Unless the contrary intention appears, property acquired with partnership funds is partnership property.

(3) Any estate in real property may be acquired in the partnership name. Title so acquired can be conveyed only in the partnership name.

(4) A conveyance to a partnership in the partnership name, though without words of inheritance, passes the entire estate of the grantor unless a contrary intent appears.

PART III.

RELATIONS OF PARTNERS TO PERSONS DEALING WITH THE PARTNERSHIP.

SEC. 9. [Partner Agent of Partnership as to Partnership Business.] (1) Every partner is an agent of the partnership for the purpose of its business, and the act of every partner, including the execution in the partnership name of any instrument, for apparently carrying on in the usual way the business of the partnership of which he is a member binds the partnership, unless the partner so acting has in fact no authority to act for the partnership in the particular matter, and the person with whom he is dealing has knowledge of the fact that he has no such authority.

(2) An act of a partner which is not apparently for the carrying on of the business of the partnership in the usual way does not bind the partnership unless authorized by the other partners.

(3) Unless authorized by the other partners or unless they have abandoned the business, one or more but less than all the partners have no authority to:

(*a*) Assign the partnership property in trust for creditors or on the assignee's promise to pay the debts of the partnership,

(*b*) Dispose of the good-will of the business,

(*c*) Do any other act which would make it impossible to carry on the ordinary business of the partnership,

(*d*) Confess a judgment,

(*e*) Submit a partnership claim or liability to arbitration or reference.

(4) No act of a partner in contravention of a restriction on his authority shall bind the partnership to persons having knowledge of the restriction.

SEC. 10. [Conveyance of Real Property of the Partnership.] (1) Where title to real property is in the partnership name, any partner may convey title to such property by a conveyance executed in the partnership name; but the partnership may recover such property unless the partner's act binds the partnership under the provisions of paragraph (1) of section 9, or unless such property has been conveyed by the grantee or a person claiming through such grantee to a holder for value without knowledge that the partner, in making the conveyance, has exceeded his authority.

(2) Where title to real property is in the name of the partnership, a conveyance executed by a partner, in his own name, passes the equitable interest of the partnership, provided the act is one within the authority of the partner under the provisions of paragraph (1) of section 9.

(3) Where title to real property is in the name of one or more but not all the partners, and the record does not disclose the right of the partnership, the partners in whose name the title stands may convey title to such property, but the partnership may recover such property if the partners' act does not bind the partnership under the provisions of paragraph (1) of section 9,

unless the purchaser or his assignee, is a holder for value, without knowledge.

(4) Where the title to real property is in the name of one or more or all the partners, or in a third person in trust for the partnership, a conveyance executed by a partner in the partnership name, or in his own name, passes the equitable interest of the partnership, provided the act is one within the authority of the partner under the provisions of paragraph (1) of section 9.

(5) Where the title to real property is in the names of all the partners a conveyance executed by all the partners passes all their rights in such property.

SEC. 11. [Partnership Bound by Admission of Partner.] An admission or representation made by any partner concerning partnership affairs within the scope of his authority as conferred by this act is evidence against the partnership.

SEC. 12. [Partnership Charged with Knowledge of or Notice to Partner.] Notice to any partner of any matter relating to partnership affairs, and the knowledge of the partner acting in the particular matter, acquired while a partner or then present to his mind, and the knowledge of any other partner who reasonably could and should have communicated it to the acting partner, operate as notice to or knowledge of the partnership, except in the case of a fraud on the partnership committed by or with the consent of that partner.

SEC. 13. [Partnership Bound by Partner's Wrongful Act.] Where, by any wrongful act or omission of any partner acting in the ordinary course of the business of the partnership, or with the authority of his co-partners, loss or injury is caused to any person, not being a partner in the partnership, or any penalty is incurred, the partnership is liable therefor to the same extent as the partner so acting or omitting to act.

SEC. 14. [Partnership Bound by Partner's Breach of Trust.] The partnership is bound to make good the loss:

(*a*) Where one partner acting within the scope of his apparent authority receives money or property of a third person and misapplies it; and

(*b*) Where the partnership in the course of its business receives money or property of a third person and the money or property so received is misapplied by any partner while it is in the custody of the partnership.

SEC. 15. [Nature of Partner's Liability.] All partners are liable:

(*a*) Jointly and severally for everything chargeable to the partnership under sections 13 and 14.

(*b*) Jointly for all other debts and obligations of the partnership; but any partner may enter into a separate obligation to perform a partnership contract.

SEC. 16. [Partner by Estoppel.] (1) When a person, by words spoken or written or by conduct, represents himself, or consents to another representing him to any one, as a partner in an existing partnership or with one or more persons not actual partners, he is liable to any such person to whom such representation has been made, who has, on the faith of such representation, given credit to the actual or apparent partnership, and if he has made such representation or consented to its being made in a public manner he is liable to such person, whether the representation has or has not been made or communicated to such person so giving credit by or with the knowledge of the apparent partner making the representation or consenting to its being made.

(*a*) When a partnership liability results, he is liable as though he were an actual member of the partnership.

(*b*) When no partnership liability results, he is liable jointly with the other persons, if any, so consenting to the contract or representation as to incur liability, otherwise separately.

(2) When a person has been thus represented to be a partner in an existing partnership, or with one or more persons not actual partners, he is an agent of the persons consenting to such representation to bind them to the same extent and in the same manner as though he were a partner in fact, with respect to persons who rely upon the representation. Where all the members of the existing partnership consent to the representation, a partnership act or obligation results; but in all other cases it is the joint act or obligation of the person acting and the persons consenting to the representation.

SEC. 17. [Liability of Incoming Partner.] A person admitted as a partner into an existing partnership is liable for all the obligations of the partnership arising before his admission as though he had been a partner when such obligations were in-

curred, except that this liability shall be satisfied only out of partnership property.

PART IV.

RELATION OF PARTNERS TO ONE ANOTHER.

SEC. 18. [Rules Determining Rights and Duties of Partners.] The rights and duties of the partners in relation to the partnership shall be determined, subject to any agreement between them, by the following rules:

(*a*) Each partner shall be repaid his contributions, whether by way of capital or advances to the partnership property and share equally in the profits and surplus remaining after all liabilities, including those to partners, are satisfied; and must contribute towards the losses, whether of capital or otherwise, sustained by the partnership according to his share in the profits.

(*b*) The partnership must indemnify every partner in respect of payments made and personal liabilities reasonably incurred by him in the ordinary and proper conduct of its business, or for the preservation of its business or property.

(*c*) A partner, who in aid of the partnership makes any payment or advance beyond the amount of capital which he agreed to contribute, shall be paid interest from the date of the payment or advance.

(*d*) A partner shall receive interest on the capital contributed by him only from the date when repayment should be made.

(*e*) All partners have equal rights in the management and conduct of the partnership business.

(*f*) No partner is entitled to remuneration for acting in the partnership business, except that a surviving partner is entitled to reasonable compensation for his services in winding up the partnership affairs.

(*g*) No person can become a member of a partnership without the consent of all the partners.

(*h*) Any difference arising as to ordinary matters connected with the partnership business may be decided by a majority of the partners; but no act in contravention of any agreement between the partners may be done rightfully without the consent of all the partners.

SEC. 19. [Partnership Books.] The partnership books shall be kept, subject to any agreement between the partners, at the principal place of business of the partnership, and every partner shall at all times have access to and may inspect and copy any of them.

SEC. 20. [Duty of Partners to Render Information.] Partners shall render on demand true and full information of all things affecting the partnership to any partner or the legal representative of any deceased partner or partner under legal disability.

SEC. 21. [Partner Accountable as a Fiduciary.] (1) Every partner must account to the partnership for any benefit, and hold as trustee for it any profits derived by him without the consent of the other partners from any transaction connected with the formation, conduct, or liquidation of the partnership or from any use by him of its property.

(2) This section applies also to the representatives of a deceased partner engaged in the liquidation of the affairs of the partnership as the personal representatives of the last surviving partner.

SEC. 22. [Right to an Account.] Any partner shall have the right to a formal account as to partnership affairs:

(*a*) If he is wrongfully excluded from the partnership business or possession of its property by his co-partners,

(*b*) If the right exists under the terms of any agreement,

(*c*) As provided by section 21,

(*d*) Whenever other circumstances render it just and reasonable.

SEC. 23. [Continuation of Partnership Beyond Fixed Term.] (1) When a partnership for a fixed term or particular undertaking is continued after the termination of such term or particular undertaking without any express agreement, the rights and duties of the partners remain the same as they were at such termination, so far as is consistent with a partnership at will.

(2) A continuation of the business by the partners or such of them as habitually acted therein during the term, without any settlement or liquidation of the partnership affairs, is *prima facie* evidence of a continuation of the partnership.

PART V.

PROPERTY RIGHTS OF A PARTNER.

SEC. 24. [Extent of Property Rights of a Partner.] The property rights of a partner are (1) his rights in specific partnership property, (2) his interest in the partnership, and (3) his right to participate in the management.

SEC. 25. [Nature of a Partner's Right in Specific Partnership Property.]

(1) A partner is co-owner with his partners of specific partnership property holding as a tenant in partnership.

(2) The incidents of this tenancy are such that:

(*a*) A partner, subject to the provisions of this act and to any agreement between the partners, has an equal right with his partners to possess specific partnership property for partnership purposes; but he has no right to possess such property for any other purpose without the consent of his partners.

(*b*) A partner's right in specific partnership property is not assignable except in connection with the assignment of the rights of all the partners in the same property.

(*c*) A partner's right in specific partnership property is not subject to attachment or execution, except on a claim against the partnership. When partnership property is attached for a partnership debt the partners, or any of them, or the representatives of a deceased partner, cannot claim any right under the homestead or exemption laws.

(*d*) On the death of a partner his right in specific partnership property vests in the surviving partner or partners, except where the deceased was the last surviving partner, when his right in such property vests in his legal representative. Such surviving partner or partners, or the legal representative of the last surviving partner, has no right to possess the partnership property for any but a partnership purpose.

(*e*) A partner's right in specific partnership property is not subject to dower, curtesy, or allowances to widows, heirs, or next of kin.

SEC. 26. [Nature of Partner's Interest in the Partnership.] A partner's interest in the partnership is his share of the profits and surplus, and the same is personal property.

SEC. 27. [Assignment of Partner's Interest.] (1) A conveyance by a partner of his interest in the partnership does not of itself dissolve the partnership, nor, as against the other partners in the absence of agreement, entitle the assignee, during the continuance of the partnership, to interfere in the management or administration of the partnership business or affairs, or to require any information or account of partnership transactions, or to inspect the partnership books; but it merely entitles the assignee to receive in accordance with his contract the profits to which the assigning partner would otherwise be entitled.

(2) In case of a dissolution of the partnership, the assignee is entitled to receive his assignor's interest and may require an account from the date only of the last account agreed to by all the partners.

SEC. 28. [Partner's Interest Subject to Charging Order.] (1) On due application to a competent court of any judgment creditor of a partner, the court which entered the judgment, order, or decree, or any other court, may charge the interest of the debtor partner with payment of the unsatisfied amount of such judgment debt with interest thereon; and may then or later appoint a receiver of his share of the profits, and of any other money due or to fall due to him in respect of the partnership, and make all other orders, directions, accounts and inquiries which the debtor partner might have made, or which the circumstances of the case may require.

(2) The interest charged may be redeemed at any time before foreclosure, or in case of a sale being directed by the court may be purchased without thereby causing a dissolution:

(*a*) With separate property, by any one or more of the partners, or

(*b*) With partnership property, by any one or more of partners with the consent of all the partners whose interests are not so charged or sold.

(3) Nothing in this act shall be held to deprive a partner of his right, if any, under the exemption laws, as regards his interest in the partnership.

PART VI.

DISSOLUTION AND WINDING UP.

SEC. 29. [Dissolution Defined.] The dissolution of a partnership is the change in the relation of the partners caused by any partner ceasing to be associated in the carrying on as distinguished from the winding up of the business.

SEC. 30. [Partnership Not Terminated by Dissolution.] On dissolution the partnership is not terminated, but continues until the winding up of partnership affairs is completed.

SEC. 31. [Causes of Dissolution.] Dissolution is caused:

(1) Without violation of the agreement between the partners,

(*a*) By the termination of the definite term or particular undertaking specified in the agreement,

(*b*) By the express will of any partner when no definite term or particular undertaking is specified,

(*c*) By the express will of all the partners who have not assigned their interests or suffered them to be charged for their separate debts, either before or after the termination of any specified term or particular undertaking,

(*d*) By the expulsion of any partner from the business *bona fide* in accordance with such a power conferred by the agreement between the partners;

(2) In contravention of the agreement between the partners, where the circumstances do not permit a dissolution under any other provision of this section, by the express will of any partner at any time;

(3) By any event which makes it unlawful for the business of the partnership to be carried on or for the members to carry it on in partnership;

(4) By the death of any partner;

(5) By the bankruptcy of any partner or the partnership;

(6) By decree of court under section 32.

SEC. 32. [Dissolution by Decree of Court.] (1) On application by or for a partner the court shall decree a dissolution whenever:

(*a*) A partner has been declared a lunatic in any judicial proceeding or is shown to be of unsound mind,

(*b*) A partner becomes in any other way incapable of performing his part of the partnership contract,

(*c*) A partner has been guilty of such conduct as tends to affect prejudicially the carrying on of the business,

(*d*) A partner wilfully or persistently commits a breach of the partnership agreement, or otherwise so conducts himself in matters relating to the partnership business that it is not reasonably practicable to carry on the business in partnership with him,

(*e*) The business of the partnership can only be carried on at a loss,

(*f*) Other circumstances render a dissolution equitable.

(2) On the application of the purchaser of a partner's interest under sections 28 or 29:

(*a*) After the termination of the specified term or particular undertaking,

(*b*) At any time if the partnership was a partnership at will when the interest was assigned or when the charging order was issued.

SEC. 33. [General Effect of Dissolution on Authority of Partner.] Except so far as may be necessary to wind up partnership affairs or to complete transactions begun but not then finished, dissolution terminates all authority of any partner to act for the partnership,

(1) With respect to the partners,

(*a*) When the dissolution is not by the act, bankruptcy or death of a partner; or

(*b*) When the dissolution is by such act, bankruptcy or death of a partner, in cases where section 34 so requires.

(2) With respect to persons not partners, as declared in section 35.

SEC. 34. [Right of Partner to Contribution From Co-partners After Dissolution.] Where the dissolution is caused by the act, death or bankruptcy of a partner, each partner is liable to his co-partners for his share of any liability created by any partner acting for the partnership as if the partnership had not been dissolved unless

(*a*) The dissolution being by act of any partner, the partner acting for the partnership had knowledge of the dissolution, or

(*b*) The dissolution being by the death or bankruptcy of a partner, the partner acting for the partnership had knowledge or notice of the death or bankruptcy.

SEC. 35. [Power of Partner to Bind Partnership to Third Persons After Dissolution.] (1) If the partnership is not dissolved because it has become unlawful to carry on the business, a partner cannot, after dissolution, bind the partnership to third persons by any act which is not necessary to wind up the partnership affairs or to complete transactions then unfinished unless,

(*a*) Such third person, having had relations with the partnership by which a credit was extended upon the faith of the partnership, has had no knowledge or notice of the dissolution; or

(*b*) Such third person, not having had business relations with the partnership by which a credit was extended to the partnership, has no knowledge or notice of the dissolution, and the fact of dissolution has not been advertised in a newspaper of general circulation of the place (or of each place if more than one) at which the partnership business was regularly carried on.

(2) The partnership is in no case bound by the acts of a partner who has become bankrupt; but this provision does not affect the liability of any person who, as declared by section 16, after bankruptcy, has represented himself, or consented to another's representing him to be a partner of the bankrupt.

SEC. 36. [Effect of Dissolution on Partner's Existing Liability.] (1) The dissolution of the partnership does not of itself discharge the existing liability of any partner.

(2) A partner is discharged from any existing liability upon dissolution of the partnership by an agreement to that effect between himself, the partnership creditor and the person or partnership continuing the business; and such agreement may be inferred from the course of dealing between the creditor having knowledge of the dissolution and the person or partnership continuing the business.

(3) Where a person agrees to assume the existing obligations of a dissolved partnership, the partners whose obligations have been assumed shall be discharged from any liability to any creditor of the partnership who, knowing of the agreement, consents to a material alteration in the nature or time of payment of such obligations.

(4) The individual property of a deceased partner shall be liable for all obligations of the partnership incurred while he was a partner but subject to the prior payment of his separate debts.

SEC. 37. [Right to Wind Up.] Unless otherwise agreed the partners who have not wrongfully dissolved the partnership or the legal representative of the last surviving partner, not bankrupt, has the right to wind up the partnership affairs; provided, however, that any partner, his legal representative, or his assignee, upon cause shown, may obtain winding up by the court.

SEC. 38. [Rights of Partners to Application of Partnership Property.] (1) When dissolution is caused in any way, except in contravention of the partnership agreement, each partner, as against his co-partners and all persons claiming through them in respect of their interests in the partnership, unless otherwise agreed, may have the partnership property applied to discharge its liabilities, and the surplus applied to pay in cash the net amount owing to the respective partners. But if dissolution is caused by expulsion of a partner, *bona fide* under the partnership agreement, and if the expelled partner is discharged from all partnership liabilities, either by payment or agreement under section 36 (2), he shall receive in cash only the net amount due him from the partnership.

(2) When dissolution is caused in contravention of the partnership agreement the rights of the partners shall be as follows:

(*a*) Each partner who has not caused dissolution wrongfully shall have,

I. All the rights specified in paragraph (1) of this section, and

II. The right, as against each partner who has caused the dissolution wrongfully, to damages for breach of the agreement.

(*b*) The partners who have not caused the dissolution wrongfully, if they all desire to continue the business in the same name, either by themselves or jointly with others, may do so, during the agreed term for the partnership and for that purpose may possess the partnership property, provided they secure the payment by bond approved by the court, or pay to any partner who has caused the dissolution wrongfully, the value of his in-

terest in the partnership at the dissolution, less any damages recoverable under clause (2*a* II) of this section, and in like manner indemnify him against all present or future partnership liabilities.

(*c*) A partner who has caused the dissolution wrongfully shall have:

I. If the business is not continued under the provisions of paragraph (2*b*) all the rights of a partner under paragraph (1), subject to clause (2*a* II), of this section,

II. If the business is continued under paragraph (2*b*) of this section the right as against his co-partners and all claiming through them in respect of their interests in the partnership, to have the value of his interest in the partnership, less any damages caused to his co-partners by the dissolution, ascertained and paid to him in cash, or the payment secured by bond approved by the court, and to be released from all existing liabilities of the partnership; but in ascertaining the value of the partner's interest the value of the good-will of the business shall not be considered.

SEC. 39. [Rights Where Partnership is Dissolved for Fraud or Misrepresentation.] Where a partnership contract is rescinded on the ground of the fraud or misrepresentation of one of the parties thereto, the party entitled to rescind is, without prejudice to any other right, entitled,

(*a*) To a lien on, or right of retention of, the surplus of the partnership property after satisfying the partnership liabilities to third persons for any sum of money paid by him for the purchase of an interest in the partnership and for any capital or advances contributed by him; and

(*b*) To stand, after all liabilities to third persons have been satisfied, in the place of the creditors of the partnership for any payments made by him in respect of the partnership liabilities; and

(*c*) To be indemnified by the person guilty of the fraud or making the representation against all debts and liabilities of the partnership.

SEC. 40. [Rules for Distribution.] In settling accounts between the partners after dissolution, the following rules shall be observed, subject to any agreement to the contrary:

(*a*) The assets of the partnership are;

I. The partnership property,

II. The contributions of the partners necessary for the payment of all the liabilities specified in clause (*b*) of this paragraph.

(*b*) The liabilities of the partnership shall rank in order of payment, as follows;

I. Those owing to creditors other than partners,

II. Those owing to partners other than for capital and profits,

III. Those owing to partners in respect of capital,

IV. Those owing to partners in respect of profits.

(*c*) The assets shall be applied in the order of their declaration in clause (*a*) of this paragraph to the satisfaction of the liabilities.

(*d*) The partners shall contribute, as provided by section 18 (*a*) the amount necessary to satisfy the liabilities; but if any, but not all, of the partners are insolvent, or, not being subject to process, refuse to contribute, the other partners shall contribute their share of the liabilities, and, in the relative proportions in which they share the profits, the additional amount necessary to pay the liabilities.

(*e*) An assignee for the benefit of creditors or any person appointed by the court shall have the right to enforce the contributions specified in clause (*d*) of this paragraph.

(*f*) Any partner or his legal representative shall have the right to enforce the contributions specified in clause (*d*) of this paragraph, to the extent of the amount which he has paid in excess of his share of the liability.

(*g*) The individual property of a deceased partner shall be liable for the contributions specified in clause (*d*) of this paragraph.

(*h*) When partnership property and the individual properties of the partners are in the possession of a court for distribution, partnership creditors shall have priority on partnership property and separate creditors on individual property, saving the rights of lien or secured creditors as heretofore.

(*i*) Where a partner has become bankrupt or his estate is insolvent the claims against his separate property shall rank in the following order:

I. Those owing to separate creditors,

II. Those owing to partnership creditors,

III. Those owing to partners by way of contribution.

SEC. 41. [Liability of Persons Continuing the Business in Certain Cases.] (1) When any new partner is admitted into an existing partnership, or when any partner retires and assigns (or the representative of the deceased partner assigns) his rights in partnership property to two or more of the partners, or to one or more of the partners and one or more third persons, if the business is continued without liquidation of the partnership affairs, creditors of the first or dissolved partnership are also creditors of the partnership so continuing the business.

(2) When all but one partner retire and assign (or the representative of a deceased partner assigns) their rights in partnership property to the remaining partner, who continues the business without liquidation of partnership affairs, either alone or with others, creditors of the dissolved partnership are also creditors of the person or partnership so continuing the business.

(3) When any partner retires or dies and the business of the dissolved partnership is continued as set forth in paragraphs (1) and (2) of this section, with the consent of the retired partners or the representative of the deceased partner, but without any assignment of his right in partnership property, rights of creditors of the dissolved partnership and of the creditors of the person or partnership continuing the business shall be as if such assignment had been made.

(4) When all the partners or their representatives assign their rights in partnership property to one or more third persons who promise to pay the debts and who continue the business of the dissolved partnership, creditors of the dissolved partnership are also creditors of the person or partnership continuing the business.

(5) When any partner wrongfully causes a dissolution and the remaining partners continue the business under the provisions of section 38 (2*b*), either alone or with others, and without liquidation of the partnership affairs, creditors of the dis-

solved partnership are also creditors of the person or partnership continuing the business.

(6) When a partner is expelled and the remaining partners continue the business either alone or with others, without liquidation of the partnership affairs, creditors of the dissolved partnership are also creditors of the person or partnership continuing the business.

(7) The liability of a third person becoming a partner in the partnership continuing the business, under this section to the creditors of the dissolved partnership shall be satisfied out of partnership property only.

(8) When the business of a partnership after dissolution is continued under any conditions set forth in this section the creditors of the dissolved partnership, as against the separate creditors of the retiring or deceased partner or the representative of the deceased partner, have a prior right to any claim of the retired partner or the representative of the deceased partner against the person or partnership continuing the business, on account of the retired or deceased partner's interest in the dissolved partnership or on account of any consideration promised for such interest or for his right in partnership property.

(9) Nothing in this section shall be held to modify any right of creditors to set aside any assignment on the ground of fraud.

(10) The use by the person or partnership continuing the business of the partnership name, or the name of a deceased partner as part thereof, shall not of itself make the individual property of the deceased partner liable for any debts contracted by such person or partnership.

SEC. 42. [Rights of Retiring or Estate of Deceased Partner When the Business is Continued.] When any partner retires or dies, and the business is continued under any of the conditions set forth in section 41 (1, 2, 3, 5, 6), or section 38 (2*b*), without any settlement of accounts as between him or his estate and the person or partnership continuing the business, unless otherwise agreed, he or his legal representative as against such persons or partnership may have the value of his interest at the date of dissolution ascertained, and shall receive as an ordinary creditor an amount equal to the value of his interest in the dissolved partnership with interest, or, at his option or at the option of his legal

representative, in lieu of interest, the profits attributable to the use of his right in the property of the dissolved partnership; provided that the creditors of the dissolved partnership as against the separate creditors, or the representative of the retired or deceased partner, shall have priority on any claim arising under this section, as provided by section 41 (8) of this act.

SEC. 43. [Accrual of Actions.] The right to an account of his interest shall accrue to any partner, or his legal representative, as against the winding up partners or the surviving partners or the person or partnership continuing the business, at the date of dissolution, in the absence of any agreement to the contrary.

PART VII.

MISCELLANEOUS PROVISIONS.

SEC. 44. [When Act Takes Effect.] This act shall take effect on the ..... day of ..... one thousand nine hundred and .....

SEC. 45. [Legislation Repealed.] All acts or parts of acts inconsistent with this act are hereby repealed.

EXHIBIT B.

COMPULSORY ACT.

[For elective provisions see Appendix.]

UNIFORM WORKMEN'S COMPENSATION ACT

APPROVED BY CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS, OCTOBER, 1914.

An act to make uniform the law relating to compensation to employees for personal injuries sustained in the course of their employment.

NOTE.—In some states a more descriptive title will be required.

Be it enacted, etc., as follows:

I.

RIGHTS AND REMEDIES GRANTED AND AFFECTED.

EMPLOYMENTS COVERED.

SECTION 1. This act shall apply to all public and all industrial employment, as hereinafter defined. If a workman receives personal injury by accident arising out of and in the course of

such employment, his employer or the insurance carrier shall pay compensation in the amounts and to the person or persons hereinafter specified.

STATE AND MUNICIPAL BODIES.

SEC. 2. This act shall apply to employees (other than officials as hereinafter defined) of the state, and all counties, cities, towns, and other public corporations, within the state. Policemen and firemen and others entitled to pensions shall be deemed employees within the meaning of this act. If, however, any policeman or fireman or other person entitled to a pension claims compensation under this act there shall be deducted from such compensation any sum which such policeman or fireman or other person may be entitled to receive from any pension or other benefit fund to which the state or municipal body may contribute.

INJURIES NOT COVERED.

SEC. 3. No compensation shall be allowed for an injury caused (1) by the employee's wilful intention to injure himself or to injure another, or (2) by his intoxication. If the employer claims an exemption or forfeiture under this section the burden of proof shall be upon him.

RIGHT TO COMPENSATION EXCLUSIVE.

SEC. 4. The rights and remedies herein granted to an employee on account of a personal injury for which he is entitled to compensation under this act shall exclude all other rights and remedies of such employee, his personal representatives, dependents, or next of kin, at common law or otherwise, on account of such injury.

Employers, who hire workmen within this state to work outside of the state, may agree with such workmen that the remedies under this act shall be exclusive as regards injuries received outside this state by accident arising out of and in the course of such employment; and all contracts of hiring in this state shall be presumed to include such an agreement.

LIABILITY OF THIRD PERSONS.

SEC. 5. When any injury for which compensation is payable under this act shall have been sustained under circumstances creating in some other person than the employer a legal liability to pay damages in respect thereto, the injured employee may, at his option, either claim compensation under this act or obtain damages from or proceed at law against such other person to recover damages; and if compensation is claimed and awarded under this act any employer having paid the compensation or having become liable therefor shall be subrogated to the rights of the injured employee to recover against that person, provided, if the employer shall recover from such other person damages in excess of the compensation already paid or awarded to be paid under this act, then any such excess shall be paid to the injured employee less the employer's expenses and costs of action.

CONTRACTING OUT FORBIDDEN.

SEC. 6. No contract, rule, regulation, or device whatsoever shall operate to relieve the employer in whole or in part from any liability created by this act.

II.

COMPENSATION.

DEATH BENEFITS.

SEC. 7. If death results from the injury within [ ] years, the employer or the insurance carrier shall pay to the persons entitled to compensation or, if there are none, then to the personal representative of the deceased employee, burial expenses not to exceed [ ] dollars; and shall also pay to or for the following persons for the following periods a weekly compensation equal to the following percentages of the deceased employee's average weekly wages as defined in section 15:

(*a*) To the dependent widow or widower, if there be no dependent children, [ ] per cent.

(*b*) To the dependent widow or widower, if there be one or two dependent children, [ ] per cent; or if there be three or more dependent children, [ ] per cent. Such compensation to the widow or widower shall be for the use and benefit of

such widow or widower and of the dependent children, and the Industrial Accident Board may from time to time apportion such compensation between them in such way as it deems best.

(*c*) If there be no dependent widow or widower, but a dependent child or children, then to such child or children [ ] per cent, with [ ] per cent additional for each child in excess of two, with a maximum of [ ] per cent, to be divided equally among such children if more than one.

(*d*) If there be neither dependent widow, widower, nor child, but there be a dependent father or mother, then to such parent, if wholly dependent [ ] per cent, or if partially dependent [ ] per cent, or if both parents be dependent then one-half of the foregoing compensation to each of them; or, if there be no such parents, but a dependent grandparent, then to every such grandparent the same compensation as to a parent.

(*e*) If there be neither dependent widow, widower, child, parent, or grandparent, but there be a dependent grandchild, brother, or sister, or two or more of them, then to such dependents [ ] per cent for one such dependent and [ ] per cent additional for each additional such dependent, with a maximum of [ ] per cent, to be divided equally between such dependents if more than one.

NOTE.—*Brackets.* **In all cases where brackets appear it is intended that words and figures shall be inserted as may best suit local sentiment and conditions. Assistance in filling the gaps may be had by consulting the notes which follow many of the sections.**

DEPENDENTS.

SEC. 8. The following persons, and they only, shall be deemed dependents and entitled to compensation under the provisions of this act:

A child if under [ ] year of age, or incapable of self-support and unmarried, whether ever actually dependent upon the deceased or not.

The widow only if living with the deceased, or actually dependent, wholly or partially, upon him.

The widower only if incapable of self-support and actual dependent, wholly or partially, upon the deceased at the time of her injury.

A parent or grandparent only if actually dependent, wholly or partially, upon the deceased.

A grandchild, brother, or sister only if under [ ] years of age, or incapable of self-support, and wholly dependent upon the deceased. The relation of dependency must exist at the time of the injury.

PERIODS OF COMPENSATION.

SEC. 9. The compensation herein provided for shall be payable during the following periods:

To a widow, until death or remarriage, but in no case to exceed [ ] weeks.

To a widower, during disability or until remarriage, but in no case to exceed [ ] weeks.

To or for a child, until [ ] years of age, but in the case of a child incapable of self-support and unmarried as long as so incapable, but in no case to exceed [ ] weeks beyond said age of [ ] years.

To a parent or grandparent, during the continuation of a condition of actual dependency, but in no case to exceed [ ] weeks.

To or for a grandchild, brother, or sister, during dependency as hereinbefore defined, but in no case to exceed [ ] weeks.

Upon the cessation of compensation under this section to or on account of any person, the compensation of the remaining persons entitled to compensation for the unexpired part of the period during which their compensation is payable shall be that which such persons would have received if they had been the only persons entitled to compensation at the time of the decedent's death.

CERTAIN WORDS DEFINED.

SEC. 10. As used in this section the term "child" includes step-children, adopted children, posthumous children, and acknowledged illegitimate children, but does not include married children unless dependent. The terms "brother" and "sister" include step-brothers and step-sisters, half-brothers and half-sisters, and brothers and sisters by adoption, but do not include

married brothers nor married sisters unless dependent. The term "grandchild" includes children of adopted children and children of step-children, but does not include step-children of children, step-children of step-children, step-children of adopted children, nor married grandchildren unless dependent. The term "parent" includes step-parents and parents by adoption. The term "grand-parent" includes parents of parents by adoption, but does not include parents of step-parents, step-parents of parents, nor step-parents of step-parents. The words "adopted" and "adoption" as used in this act shall include cases where persons are treated as adopted as well as those of legal adoption.

SUNDRY PROVISIONS AS TO DEATH BENEFITS.

SEC. 11. In computing death benefits the average weekly wages of the deceased employee shall be considered not to be more than [ ] dollars, nor less than [ ] dollars; but the total weekly compensation shall not exceed in any case the average weekly wages computed as provided in section 15. Payment of death benefits by an employer in good faith to a dependent subsequent in right to another or other dependents shall protect and discharge the employer unless and until such dependent or dependents prior in right shall have given him notice of his or their claim. In case the employer is in doubt as to the respective rights of rival claimants he may apply to the Industrial Accident Board to decide between them.

In case death occurs after a period of disability, either total or partial, the period of disability shall be deducted from the total periods of compensation respectively stated in section 9.

The compensation of a person who is insane shall be paid to his or her guardian.

MEDICAL ATTENDANCE.

SEC. 12. During the first [ ] days of disability the employer shall furnish reasonable surgical, medical, and hospital services and supplies not exceeding the amount of [ ] dollars. The pecuniary liability of the employer for the medical, surgical, and hospital service herein required shall be limited to such charges as prevail in the same community for similar treatment of injured persons of a like standard of living when such treatment is paid for by the injured person.

TOTAL DISABILITY.

SEC. 13. Where the injury causes total disability for work the employer during such disability, but not including the first [ ] days thereof, shall pay the injured employee a weekly compensation equal to [ ] per cent of his average weekly wages, but not more than [ ] dollars, nor less than [ ] dollars, a week. In no case shall the weekly payments continue after the disability ends, nor longer than [ ] weeks.

In case of an employee whose average weekly wages are less than [ ] dollars a week the weekly compensation shall be the full amount of such average weekly wages, but where the disability is permanent the weekly compensation in such case shall be [five] dollars. In case the total disability begins after a period of partial disability, the period of partial disability shall be deducted from such total period of [ ] weeks.

In the case of the following injuries the disability caused thereby shall be deemed total and permanent; to wit:

(1) The total and permanent loss of sight in both eyes.

(2) The loss of both feet at or above the ankle.

(3) The loss of both hands at or above the wrist.

(4) The loss of one hand and one foot.

(5) An injury to the spine resulting in permanent and complete paralysis of both legs or both arms or of one leg or of one arm.

(6) An injury to the skull resulting in incurable imbecility or insanity.

The above enumeration is not to be taken as exclusive.

PARTIAL DISABILITY.

SEC. 14. Where the injury causes partial disability for work, the employer, during such disability and for a period of [ ] years beginning on the [ ] day of disability, shall pay the injured workman a weekly compensation equal to [ ] per cent of the difference between his average weekly wages before the accident and the weekly wages he is most probably able to earn thereafter, but not more than [ ] dollars a week. In no case shall the weekly payments continue after the disability ends, and in case the partial disability begins after a period of

total disability the period of total disability shall be deducted from such total period of [ ] years.

In the case of the following injuries the compensation shall be [ ] per cent of the average weekly wages, but not more than [ ] dollars to be paid weekly for the periods stated against such injuries respectively; to wit:

(1) The loss by separation of one arm at or above the elbow joint, or the permanent and complete loss of the use of one arm, [ ] weeks.

(2) The permanent and complete loss of hearing in both ears, [ ] weeks.

(3) The loss by separation of one leg at or above the knee joint, or the permanent and complete loss of the use of one leg, [ ] weeks.

(4) The loss by separation of one hand at or above the wrist joint, or the permanent and complete loss of the use of one hand, [ ] weeks.

(5) The loss by separation of one foot at or above the ankle joint, or the permanent and complete loss of the use of one foot, [ ] weeks.

COMPUTATION OF WAGES.

SEC. 15. Average weekly wages shall be computed in such a manner as is best calculated to give the average weekly earnings of the workman during the twelve months preceding his injury; *provided that* where, by reason of the shortness of the time during which the workman has been in the employment, or the casual nature of the employment, or the terms of the employment, it is impracticable to compute the rate of remuneration, regard may be had to the average weekly earnings which, during the twelve months previous to the injury, were being earned by a person in the same grade employed at the same work by the employer of the injured workman, or if there is no person so employed, by a person in the same grade employed in the same class of employment and in the same district.

If a workman at the time of the injury is regularly employed in a higher grade of work than formerly during the year and with larger regular wages, only such larger wages shall be taken into consideration in computing his average weekly wages.

VOLUNTARY PAYMENTS.

SEC. 16. Any payments made by the employer or his insurer to the injured workman during the period of his disability, or to his dependents, which, by the terms of this act, were not due and payable when made, may, subject to the approval of the Board, be deducted from the amount to be paid as compensation; *provided that* in case of disability such deduction shall be made by shortening the period during which compensation must be paid, and not by reducing the amount of the weekly payments under sections 13 and 14.

PERIODICAL PAYMENTS.

SEC. 17. The Board, upon the application of either party, may in its discretion, having regard to the welfare of the employee and the convenience of the employer, authorize compensation to be paid monthly or quarterly instead of weekly.

COMMUTATION OF PAYMENTS.

SEC. 18. Whenever the board determines that it is for the best interest of all parties, the liability of the employer for compensation may, on application to the board by any party interested, be discharged in whole or in part by the payment of one or more lump sums to be fixed by the board.

TRUSTEE IN CASE OF LUMP SUM PAYMENTS.

SEC. 19. Whenever for any reason the board deems it expedient, any lump sum which is to be paid as provided in section 18 shall be paid by the employer to some suitable person or corporation appointed by the [ ] court as trustee to administer or apply the same for the benefit of the person or persons entitled thereto in the manner provided by the board. The receipt of such trustee for the amount so paid shall discharge the employer or any one else who is liable therefor.

III.

PROCEDURE IN OBTAINING COMPENSATION.

MEDICAL EXAMINATION.

SEC. 20. After an injury and during the period of disability, the workman, if so requested by his employer, or ordered by the board, shall submit himself to examination, at reasonable times

and places, to a duly qualified physician or surgeon designated and paid by the employer. The workman shall have the right to have a physician or surgeon designated and paid by himself present at such examination, which right, however, shall not be construed to deny to the employer's physician the right to visit the injured workman at all reasonable times and under all reasonable conditions during total disability. If a workman refuses to submit himself to or in any way obstructs such examination, his right to take or prosecute any proceeding under this act shall be suspended until such refusal or obstruction ceases, and no compensation shall be payable for the period during which such refusal or obstruction continues.

NOTICE OF INJURY AND CLAIM FOR COMPENSATION.

SEC. 21. No proceedings under this act for compensation for an injury shall be maintained unless a notice of the injury shall have been given to the employer as soon as practicable after the happening thereof, and unless a claim for compensation with respect to such injury shall have been made within [ ] after the date of the injury; or, in the case of death, then within [ ] after such death, whether or not a claim had been made by the employee himself for compensation. Such notice and such claim may be given or made by any person claiming to be entitled to compensation or by some one on his behalf. If payments of compensation have been made voluntarily the making of a claim within said period shall not be required.

FORM OF NOTICE AND CLAIM.

SEC. 22. Such notice and such claim shall be in writing, and such notice shall contain the name and address of the employee, and shall state in ordinary language the time, place, nature, and cause of the injury, and shall be signed by him or by a person on his behalf, or, in the event of his death, by any one or more of his dependents or by a person on their behalf. The notice may include the claim.

GIVING OF NOTICE AND MAKING OF CLAIM.

SEC. 23. Any notice under this act shall be given to the employer, or, if the employer be a partnership, then to any one of the partners. If the employer be a corporation, then the notice may be given to any agent of the corporation upon whom process

may be served, or to any officer of the corporation, or any agent in charge of the business at the place where the injury occurred. Such notice shall be given by delivering it or by sending it by mail by registered letter addressed to the employer at his or its last known residence or place of business. The foregoing provisions shall apply to the making of a claim.

SUFFICIENCY OF NOTICE.

SEC. 24. A notice given under the provisions of section 21 of this act shall not be held invalid or insufficient by reason of any inaccuracy in stating the time, place, nature, or cause of the injury, or otherwise, unless it is shown that the employer was in fact misled to his injury thereby. Want of notice or delay in giving notice shall not be a bar to proceedings under this act if it be shown that the employer, his agent or representative, had knowledge of the accident, or that the employer has not been prejudiced by such delay or want of notice.

LIMITATION OF TIME AS REGARDS MINORS AND INSANE.

SEC. 25. No limitation of time provided in this act shall run as against any person who is mentally incompetent or a minor dependent so long as he has no committee, guardian, or next friend.

IV.

INDUSTRIAL ACCIDENT BOARD.

NOTE.—Sections 26–41, inclusive, which relate to procedure, are intended to be suggestive only, and may be modified in those states which require a jury trial, and may be supplemented by further provisions needed to meet any local needs.

CREATION OF BOARD.

SEC. 26. A board is hereby created, to be known as the Industrial Accident Board, consisting of five members to be appointed by the Governor, by and with the consent of the [ ], one of whom shall be designated by the Governor as Chairman. Appointments to fill vacancies may be made during the recesses of the [ ], but shall be subject to confirmation by the [ ] at the next ensuing session of the [ ].

Each member of the board shall hold office for five years except that when the board is first constituted one member shall be appointed for one year, one for two years, one for three years, one for four years, and one for five years. Thereafter one member shall be appointed every year for the full term of five years.

SALARIES AND EXPENSES.

SEC. 27. The salaries and expenses of the board shall be paid by the state. The salary of the Chairman shall be [ ] dollars per year, and the salary of the other members shall be [ ] dollars per year each. The board may appoint a Secretary at a salary of not more than [ ] dollars per year, and may remove him. The board shall be provided with offices in the capitol, or in some other suitable building in the city of [ ], in which its records shall be kept, and it shall also be provided with necessary office furniture, stationery, and other supplies. The board shall have a seal for the authentication of its orders, awards, and proceedings, upon which shall be inscribed the words, "Industrial Accident Board—[ ]—Seal." It shall employ such assistants and clerical help as it may deem necessary, and fix the compensation of all persons so employed: Provided that all such clerical assistants shall be subject to existing laws regulating the selection, grading, and compensation of department clerks. The members of the board and its assistants shall be entitled to receive from the state their actual and necessary expenses while traveling on the business of the board, but such expenses shall be sworn to by the person who incurred the same, and shall be approved by the Chairman of the board before payment is made. All such salaries and expenses shall be audited and paid out of the state treasury in the manner prescribed for similar expenditures in other departments or branches of the state service.

RULES OF BOARD, WITNESSES, BLANKS.

SEC. 28. The board may make rules not inconsistent with this act for carrying out the provisions of this act. Process and procedure under this act shall be as summary and simple as reasonably may be. The board, or any member thereof, shall have the power to subpœna witnesses, administer oaths, and to examine

such of the books and records of the parties to a proceeding as relate to the questions in dispute. The [ ] court shall have power to enforce by proper proceedings the attendance and testimony of witnesses, and the production and examination of books, papers, and records. The board shall cause to be printed and furnished free of charge to any employer or employee such blank forms as it shall deem requisite to facilitate or promote the efficient administration of this act.

AGREEMENTS.

SEC. 29. If the employer and the injured employee reach an agreement in regard to compensation under this act, a memorandum of the agreement shall be filed with the board and, if approved by it, thereupon the memorandum shall for all purposes be enforceable under the provisions of section 38, unless modified as provided in section 36.

Such agreements shall be approved by the board only when the terms conform to the provisions of this act.

COMMITTEE OF ARBITRATION.

SEC. 30. If the compensation is not settled by agreement, either party may make an application to the board for the formation of a committee of arbitration. Such committee shall consist of three members, one of whom shall be a member of the Industrial Accident Board, or appointed by it, who shall act as Chairman. The other two members shall be named, respectively, by the parties. If a vacancy occurs it shall be filled in the same way as the original appointment.

FORMATION OF COMMITTEE.

SEC. 31. Immediately after such application the board shall designate one of its members, or a substitute, to act as Chairman of the committee of arbitration, and shall request the parties to appoint their respective representatives. If within seven days after such request, or after a vacancy has occurred, either party does not appoint his representative the board shall fill the vacancy and notify the parties to that effect.

NOTE.—" or a substitute." These words are used so that hearings may not be delayed when the work of the Board is congested.

HEARINGS AND AWARDS.

SEC. 32. The committee on arbitration shall make such inquiries and investigations as it shall deem necessary. The hearings of the committee, unless otherwise agreed, shall be held in the city or town where the injury occurred if within this state, and the award of the committee, together with a statement of its findings of fact, rulings of law, and any other matters pertinent to the questions arising before it, shall be filed with the Industrial Accident Board. A copy of the award shall be immediately sent to the parties. Unless a claim for a review is filed by either party within [ ] days the award shall be enforceable under the provisions of section 38.

EXAMINATION BY PHYSICIAN.

SEC. 33. The Industrial Accident Board, or any member thereof, may appoint a duly qualified impartial physician to examine the injured employee and to report. The fee for this service shall be [ ] dollars and traveling expenses, but the board may allow additional reasonable amounts in extraordinary cases.

EXPENSES OF ARBITRATORS AND PHYSICIANS.

SEC. 34. The fees and expenses of arbitrators under section 32 and of physicians under section 33 shall be paid by the state, as the other expenses of the board are paid.

REVIEW OF AWARD.

SEC. 35. If an application for review is made to the board, or if the committee fails to make an award within thirty days after its formation, the board shall allow a full trial and shall make an award which shall be filed with the record of proceedings and shall state its conclusions of fact and rulings of law, and shall immediately send to the parties a copy of the award.

MODIFICATION OF AWARDS AND AGREEMENTS.

SEC. 36. On the application of any party on the ground of a change in conditions, the board may at any time, but not oftener than once in six months, review any agreement or award, and on such review may make an award ending, diminishing, or increas-

ing the compensation previously agreed upon or awarded subject to the maximum and minimum provided in this act, and shall state its conclusions of fact and rulings of law, and immediately send to the parties a copy of the award, but this section shall not apply to a commutation of payments under section 18.

APPEALS FROM BOARD.

SEC. 37. An award of the board, in the absence of fraud, shall be final and conclusive between the parties except as provided in section 36, unless within [ ] days after a copy has been sent to the parties either party appeals to the [ ] court. On such appeal the jurisdiction of said court shall be limited to a review of questions of law. The board may certify questions of law to the highest court for its determination.

ENFORCEMENT OF AWARD.

SEC. 38. Any party in interest may file in the [ ] court for the county in which the injury occurred, or for the county of [ ], a certified copy of a decision of the board awarding compensation, from which no appeal has been taken within the time allowed therefor or a certified copy of a decision of an arbitration committee awarding compensation from which no claim for review has been filed within the time allowed therefor, or a certified copy of a memorandum of agreement approved by the board, whereupon said court shall render a decree or judgment in accordance therewith and notify the parties thereof. Such decree or judgment shall have the same effect, and all proceedings in relation thereto shall thereafter be the same, as though said decree or judgment had been rendered in a suit duly heard and determined by said court, except that there shall be no appeal therefrom.

COSTS.

SEC. 39. If the committee of arbitration, Industrial Accident Board, or any court before whom any proceedings are brought under this act, determines that such proceedings have been brought, prosecuted, or defended without reasonable ground, it may assess the whole cost of the proceedings upon the party who has so brought, prosecuted, or defended them.

GENERAL POWERS OF BOARD.

SEC. 40. All questions arising under this act, if not settled by agreement of the parties interested therein with the approval of the board, shall, except as otherwise herein provided, be determined by the board. The decisions of the board shall be enforceable by the [ ] court under the provisions of section 38. There shall be a right of appeal from decisions of the board to the [ ] court as provided in section 37, but in no case shall such an appeal, either under this section or under section 37, operate as a supersedeas or stay unless the board or the [ ] court shall so order.

REVISION OF DECREES.

SEC. 41. The [ ] court, upon the filing with it of a certified copy of a decision of the Industrial Accident Board ending, diminishing, or increasing compensation previously awarded, shall revoke or modify its prior decree or judgment so that it will conform to said decision.

INJURIES OUTSIDE THE STATE.

SEC. 42. If a workman who has been hired in this state receives personal injury by accident arising out of and in the course of, such employment, he shall be entitled to compensation according to the law of this state even though such injury was received outside of this state.

If a workman who has been hired outside of this state is injured while engaged in his employer's business, and is entitled to compensation for such injury under the law of the state where he was hired, he shall be entitled to enforce against his employer his rights in this state if his rights are such that they can reasonably be determined and dealt with by the board and the court in this state.

V.

PREFERENCES AND ASSIGNMENTS.

PREFERENCES.

SEC. 43. All rights of compensation granted by this act shall have the same preference or priority for the whole thereof against the assets of the employer as is allowed by law for any unpaid wages for labor.

ASSIGNMENTS; ATTORNEYS' FEES.

SEC. 44. No claims for compensation under this act shall be assignable, and all compensation and claims therefor shall be exempt from all claims of creditors. Claims of attorneys and of physicians for services under this act shall be subject to the approval of the board.

VI.

SECURITY FOR COMPENSATION.

SECURITY FOR PAYMENT OF COMPENSATION.

SEC. 45. Employers, but not including the state or the municipal bodies mentioned in section 2, shall secure compensation to their employees in one of the following ways:

(1) By insuring and keeping insured the payment of such compensation in the state insurance fund, or

(2) By insuring and keeping insured the payment of such compensation with any stock corporation or mutual association authorized to transact the business of workmen's compensation insurance in this state, or

(3) By obtaining and keeping in force guarantee insurance with any company authorized to do such guarantee business within the state, or

(4) By depositing and maintaining with the state insurance manager security satisfactory to said manager securing the payment by said employer of compensation according to the terms of this act.

NOTICE OF INSURANCE.

SEC. 46. If the insurance so effected is not with the state insurance fund the employer shall forthwith file with the state insurance manager in form prescribed by him a notice of his insurance, together with a copy of the contract or policy of insurance.

POSTING OF NOTICE REGARDING INSURANCE.

SEC. 47. Every employer who has complied with section 45 of this act shall post and maintain in a conspicuous place or places in and about his place or places of business typewritten or printed notices in form prescribed by the state insurance manager, stating the fact that he has complied with the law as to securing the payment of compensation to his employees and their dependents in accordance with the provisions of this act.

EFFECT OF FAILURE TO SECURE COMPENSATION.

SEC. 48. If an employer fails to comply with the provisions of section 45 he shall be liable to a penalty for every day during which such failure continues, of one dollar for every employee, to be recovered in an action brought by the state insurance manager in the name of the state or in his own name, and the amounts so collected shall be paid into the state insurance fund.

The state insurance manager may, however, in his discretion, for good cause shown. remit any such penalty in whole or in part, provided the employer in default secures compensation, as provided in section 45.

Furthermore, if any employer shall be in default under section 45, for a period of thirty days, he may be enjoined by the [ ] court from carrying on his business while such default continues.

THE INSURANCE CONTRACT.

SEC. 49. Every policy of insurance and every guarantee contract covering the liability of the employer for compensation, whether issued by the state insurance manager, or by a stock company, or by a mutual association authorized to transact workmen's compensation or guarantee insurance in this state shall cover the entire liability of the employer to his employees covered by the policy or contract, and also shall contain a provision setting forth the right of the employees to enforce in their own names either by at any time filing a separate claim or by at any time making the insurance carrier a party to the original claim, the liability of the insurance carrier in whole or in part for the payment of such compensation; provided, however, that payment in whole or in part of such compensation by either the employer or the insurance carrier shall, to the extent thereof, be a bar to the recovery against the other of the amount so paid.

KNOWLEDGE OF EMPLOYER TO AFFECT INSURANCE CARRIER.

SEC. 50. Every such policy and contract shall contain a provision that, as between the employee and the insurance carrier, the notice to or knowledge of the occurence of the injury on the part of the employer shall be deemed notice or knowledge, as the case may be, on the part of the insurance carrier; that jurisdic-

tion of the employer shall, for the purpose of this act, be jurisdiction of the insurance carrier, and that the insurance carrier shall in all things be bound by and subject to the orders, findings, decisions, or awards rendered against the employer for the payment of compensation under the provisions of this act.

INSOLVENCY OF EMPLOYER NOT TO RELEASE INSURANCE CARRIER.

SEC. 51. Every such policy and contract shall contain a provision to the effect that the insolvency or bankruptcy of the employer and his discharge therein shall not relieve the insurance carrier from the payment of compensation for injuries or death sustained by an employee during the life of such policy or contract.

CANCELATION OF INSURANCE CONTRACTS.

SEC. 52. No policy or contract of insurance or guaranty issued by a stock company or mutual association against liability arising under this act shall be canceled within the time limited in such contract for its expiration until at least ten days after notice of intention to cancel such contract, on a date specified in such notice, shall have been filed in the office of the state insurance manager and also served on the employer.

INSURANCE BY THE STATE, COUNTIES, AND MUNICIPALITIES.

SEC. 53. The state, and each county, city, town, or other public corporation, which is liable to its employees for compensation may insure either with the state insurance fund or with any other authorized insurance carrier.

EMPLOYEES NOT TO PAY FOR INSURANCE.

SEC. 54. No agreement by an employee to pay any portion of the premiums paid by his employer to the state insurance fund or to contribute to a benefit fund or department maintained by such employer, or to the cost of mutual or other insurance maintained for or carried for the purpose of securing compensation as herein required shall be valid; and any employer who makes a deduction for such purpose from the wages or salary of any employee entitled to the benefits of this act shall be guilty of a misdemeanor.

VII.

State Insurance Fund.

CREATION OF STATE FUND.

Sec. 55. There is hereby created a fund, to be known as "The State Insurance Fund," for the purpose of insuring employers against liability for compensation under this act and of assuring to the persons entitled thereto the compensation provided by this act. Such fund shall consist of all premiums and penalties received and paid into the fund, of property and securities acquired by and through the use of moneys belonging to the fund, and of interest earned upon moneys belonging to the fund and deposited or invested as herein provided.

Such fund shall be administered by the state insurance manager without liability on the part of the state beyond the amount of such fund. Such fund shall be applicable to the payment of losses sustained on account of insurance and to the payment of compensation and of expenses in the manner provided in this act.

STATE INSURANCE MANAGER.

Sec. 56. The Governor, with the approval of the [ ] shall appoint a manager of the state insurance fund, who shall hold office for the term of five years unless sooner removed by the Governor for cause stated. Any vacancy in said office may be filled at any time by appointment made by the Governor with the approval of the [ ]. If such an appointment is made during a recess of the [ ] it shall be subject to confirmation by the [ ] at its next ensuing session.

POWERS AND DUTIES OF STATE INSURANCE MANAGER.

Sec. 57. It shall be the duty of such state insurance manager to conduct the business of the state insurance fund, and he is hereby vested with full authority over the said fund, and may do any and all things which are necessary or convenient in the administration thereof, or in connection with the insurance business to be carried on by him under the provisions of this act.

FURTHER STATEMENT OF POWERS.

Sec. 58. The state insurance manager shall have full power to determine the rates to be charged for insurance in said fund,

and to conduct all business in relation thereto, all of which business shall be conducted in his official name of state insurance manager.

POWER TO SUE AND BE SUED.

SEC. 59. The state insurance manager may in his official name sue and be sued in all the courts of the state, including the Industrial Accident Board, in all actions or proceedings arising out of anything done or suffered in connection with the state insurance fund or business relating thereto.

CONTRACTS.

SEC. 60. The state insurance manager may in his official name make contracts of insurance as herein provided and such other contracts relating to the state insurance fund as are authorized or permitted under the provisions of this act.

EMPLOYMENT OF ASSISTANTS.

SEC. 61. The state insurance manager may employ such assistants, experts, statisticians, actuaries, accountants, inspectors, clerks, and other employees as he may deem necessary to carry out the provisions of this act or to perform the duties imposed upon him by this act; provided that all such clerical assistants shall be subject to existing laws regulating the selection, grading, and compensation of department clerks.

PERSONAL LIABILITY.

SEC. 62. The state insurance manager shall not, nor shall any person employed by him, be personally liable in his private capacity for or on account of any act performed or contract entered into in an official capacity in good faith and without intent to defraud, in connection with the administration of the state insurance fund or affairs relating thereto.

SALARIES, EXPENSES, AND PAYMENT OF SAME.

SEC. 63. The salary of the state insurance manager shall be [ ] dollars per year. His salary, and the salaries or compensation of his several employees, and all expenses incurred by him shall be audited and paid in the first instance out of the

state treasury in the manner prescribed for similar expenditures in other departments or branches of the state service.

DELEGATION OF POWERS.

SEC. 64. The state insurance manager may act through proper deputies and may delegate to such deputies such powers as he deems necessary or convenient.

Among the powers which may be so delegated shall be the power to enter into contracts of insurance, insuring employers against liability for compensation as herein provided and insuring to employees the compensation fixed by this act; also the power to make agreements, subject to the approval of the Industrial Accident Board, for the settlement of claims against said fund for compensation for injuries in accordance with the provisions of this act; also the power to determine to whom and through whom payments of such compensation shall be made; and also the power to contract with physicians, surgeons, and hospitals for medical and surgical treatment and care and nursing of injured persons entitled to compensation from said fund.

BOND.

SEC. 65. Before entering on the duties of his office the state insurance manager shall give an official bond in the sum of [ ] dollars and shall take and subscribe an official oath. Said bond shall be approved and filed as in the case of other official bonds required of state officials.

STATE TREASURER CUSTODIAN OF FUND.

SEC. 66. The state treasurer shall be the custodian of the state insurance fund; and all disbursements therefrom shall be paid by him upon warrants or vouchers authorized and signed by the state insurance manager, and also signed by the state auditor. The state treasurer shall give a separate and additional bond in an amount to be fixed by the Governor, and with sureties approved by him, conditioned for the faithful performance of his duty as custodian of the state insurance fund. The state treasurer may deposit any portion of the said fund not needed for immediate use, in the manner and subject to all the provisions

of law respecting the deposit of other state funds by him. Interest earned by such portion of the state insurance fund deposited by the state treasurer shall be collected by him and placed to the credit of the fund.

SURPLUS AND RESERVE.

SEC. 67. Ten per centum of the premiums collected from employers insured in the fund shall be set aside by the state insurance manager for the creation of a surplus, until such surplus shall amount to the sum of one hundred thousand dollars, and thereafter five per centum of such premiums, until such time as in the judgment of the state insurance manager such surplus shall be sufficiently large to cover the catastrophe hazard and all other unanticipated losses. The state insurance manager shall also set up and maintain a reserve adequate to meet anticipated losses and carry all claims and policies to maturity. The amount of such surplus and reserve shall be subject to the approval of the state insurance commissioner.

INVESTMENT OF SURPLUS OR RESERVE.

SEC. 68. The state insurance manager may invest any of the surplus or reserve funds belonging to the state insurance fund in the same securities and investments authorized for investments by savings banks. All such securities or evidences of indebtedness shall be placed in the hands of the state treasurer, who shall be the custodian thereof. He shall collect the principal and interest thereof, when due, and pay the same into the state insurance fund. The state treasurer shall pay all warrants or vouchers drawn on the state insurance fund for the making of such investments when signed by the state insurance manager and by the state auditor. The state insurance manager, with the consent of the state auditor, may sell any of such securities, the proceeds thereof to be paid over to the state treasurer for said state insurance fund.

ADMINISTRATION EXPENSES.

SEC. 69. The entire expense of administering the state insurance fund shall be paid in the first instance by the state, out of moneys appropriated therefor. In the month of [ ] nineteen hundred and [ ], and annually thereafter in

such month, the state insurance manager shall ascertain the just amount of expense incurred by him during the preceding calendar year, in the administration of the state insurance fund, including expense incurred for the examination, determination, and payment of losses and claims, and shall refund such amount to the state treasury.

CLASSIFICATION OF RISKS AND ADJUSTMENT OF PREMIUMS.

SEC. 70. Employments insured in the state insurance fund shall be divided by the state insurance manager, for the purposes of the said fund, into classes. Separate accounts shall be kept of the amounts collected and expended in respect to each such class for convenience in determining equitable rates; but for the purpose of paying compensation the state insurance fund shall be deemed one and indivisible. The state insurance manager shall have power to rearrange any of the classes by withdrawing any employment embraced in it and transferring it wholly or in part to any other class, and from such employments to set up new classes in his discretion. The state insurance manager shall determine the hazards of the different classes and fix the rates of premiums therefor based upon the total payroll and number of employees in each of such classes of employment at the lowest possible rate consistent with the maintenance of a solvent state insurance fund and the creation of a reasonable surplus and reserve; and for such purpose may adopt a system of schedule rating in such a manner as to take account of the peculiar hazard of each individual risk.

ACCOUNTS.

SEC. 71. The state insurance manager shall keep an accurate account of the money paid in premiums by each of the several classes of employments, and the expense of administering the state insurance fund and the disbursements on account of injuries and deaths of employees in each of said classes, including the setting up of reserves adequate to meet anticipated and unexpected losses and to carry the claims to maturity; and also an account of the money received from each individual employer; and of the amount disbursed from the state insurance fund for expenses,

and on account of injuries and death of the employees of such employer, including the reserves so set up.

DIVIDENDS.

SEC. 72. At the end of every year, and at such other times as the state insurance manager in his discretion may determine, a readjustment of the rate shall be made for each of the several classes of employments or industries. If at any time there is an aggregate balance remaining to the credit of any class of employment or industry which the state insurance manager deems may safely and properly be divided, he may in his discretion credit to each individual member of such class who shall have been a subscriber to the state insurance fund for a period of six months or more prior to the time of such readjustment such proportion of such balance as he is properly entitled to, having regard to his prior paid premiums since the last readjustment of rates.

ASSESSMENTS.

SEC. 73. If the premiums fixed for any class and collected from its members are subsequently found by the state insurance manager to have been too small for any period, he may determine what additional premiums are required from said class for said period, and may make assessments accordingly, and each of the members of such class shall be liable to the said manager to pay such assessment so made upon him within thirty days after notice thereof.

READJUSTMENT OF PAYROLLS.

SEC. 74. If the amount of premium collected from any employer at the beginning of any period is ascertained by using the estimated expenditure of wages for the period of time covered by such premium payment as a basis, an adjustment of the amount of such premium shall be made at the end of such period and the actual amount of such premium shall be determined in accordance with the amount of the actual expenditure of wages for such period; and if such wage expenditure for such period is less than the amount on which such estimated premium was collected, such employer shall be entitled to receive a refund from the state insurance fund of the difference between the amount so paid

by him and the amount so found to be actually due, or to have the amount of such difference credited on succeeding premium payments at his option; and if such actual premium, when so ascertained, exceeds in amount a premium so paid by such employer at the beginning of such period, such employer shall immediately, upon being advised of the true amount of such premium due, forthwith pay to the state insurance manager an amount equal to the difference between the amount actually found to be due and the amount paid by him at the beginning of such period.

POLICIES AND PAYMENT OF PREMIUMS.

SEC. 75. (1) Every employer insuring in the state insurance fund shall receive from the state insurance manager a contract or policy of insurance in a form to be approved by the state insurance commissioner.

(2) Except as otherwise provided in this act all premiums shall be paid by every employer who elects to insure with the state insurance fund to the state insurance manager on or before [July] first, nineteen hundred and [ ] and semi-annually thereafter or at such other times as may be prescribed by the state insurance manager. Receipts shall be given for such payments and the money shall be paid over to the state treasurer to the credit of the state insurance fund.

ACTIONS FOR COLLECTION IN CASE OF DEFAULT; PENALTY.

SEC. 76. If an employer shall default in any payment required to be made by him to the state insurance fund, the amount due from him shall be collected by civil action against him in the name of the state or of the state insurance manager, and it shall be the duty of the state insurance manager forthwith to bring or cause to be brought against each such employer a civil action in the proper court for the collection of such amount so due; and the same, when collected by the state insurance manager, shall be paid into the state insurance fund, and such employer's compliance with the provisions of this act requiring payments to be made to the state insurance fund shall date from the time of the payment of said money so collected to the state insurance manager.

Any employer who is in default for ten days in payment of any premium shall also be liable to a penalty as provided in section 48.

WITHDRAWAL FROM FUND.

SEC. 77. Any employer may, upon complying with subdivisions two, three, or four of section 45 of this act, withdraw from the fund by turning in his insurance contract or policy for cancelation, provided he is not in arrears for premiums due to the fund and has given to the state insurance manager written notice of his intention to withdraw thirty days before the expiration of the period for which he has elected to insure in said fund; and also provided that in case any employer so withdraws, his liability to assessments shall continue after the date of such withdrawal as against all liabilities for such compensation accruing prior to such withdrawal.

Any employer so withdrawing may, however, terminate his entire liability by paying to the state insurance manager such sum as said manager may deem sufficient to cover such liabilities.

REINSURANCE.

SEC. 78. The state insurance manager may reinsure any risk, or any part thereof, and may enter into agreements of reinsurance in the same way and to the same extent as other insurance carriers.

AUDIT OF PAYROLLS.

SEC. 79. Every employer who is insured in the state insurance fund shall keep a true and accurate record of the number of his employees and the wages paid by him, and shall furnish to the state insurance manager, upon demand, a sworn statement of the same. Such record shall be open to inspection at any time and as often as the state insurance manager shall require to verify the number of the employees and the amount of the payroll.

FALSIFICATION OF PAYROLL.

SEC. 80. An employer who shall wilfully misrepresent the amount of the payroll upon which the premiums chargeable by the state insurance fund are to be based shall be liable to the state in ten times the amount of the difference between the premiums

paid and the amount the employer should have paid had his payroll been correctly computed; and the liability to the state under this section shall be enforced in a civil action by the state insurance manager in the name of the state, or in his own name, and any amount so collected shall become a part of the state insurance fund.

WILFUL MISREPRESENTATION.

SEC. 81. Any person who wilfully misrepresents any fact in order to obtain insurance in the state insurance fund at less than the proper rate for such insurance, or in order to obtain payment out of such fund, shall be guilty of a misdemeanor.

INSPECTIONS.

SEC. 82. The state insurance manager shall have the right to inspect the plants and establishments of employers insured in the state insurance fund; and the inspectors designated by the state insurance manager shall have free access to such premises during regular working hours, and at other reasonable times.

DISCLOSURES PROHIBITED.

SEC. 83. Information acquired by the state insurance manager or his officers or employees from employers or employees pursuant to this act shall not be open to public inspection, and any officer or employee of the state insurance manager who, without authority of the state insurance manager or pursuant to his rules, or as otherwise required by law, shall disclose the same shall be guilty of a misdemeanor.

APPROVAL OF PREMIUM RATES.

SEC. 84. All premium rates fixed by the state insurance manager for the state insurance fund shall be subject to the approval of the insurance commissioner in the same way and to the same extent as may be provided by law in the case of private insurance carriers.

PAYMENT OF COMPENSATION.

SEC. 85. The state insurance manager shall submit each month to the state auditor an estimate of the amount necessary to meet the current disbursements for insurance losses and workmen's

compensation from the state insurance fund, during each succeeding calendar month, and when such estimate shall be approved by the state auditor, the state treasurer is authorized to pay the same out of the state insurance fund. At the end of each calendar month the state insurance manager shall account to the state auditor for all moneys so received, furnishing proper vouchers therefor.

REPORTS OF STATE INSURANCE MANAGER.

SEC. 86. The state insurance manager shall file with the state insurance commissioner such reports as may be required of other insurance carriers; and shall also, whenever so requested by the state insurance commissioner, furnish him with such further information as he may need for the performance of the duties imposed upon him by this act.

VIII.

REPORTS, DEFINITIONS, AND GENERAL PROVISIONS.

REPORT OF ACCIDENTS BY EMPLOYERS.

SEC. 87. Every employer shall hereafter keep a record of all injuries, fatal or otherwise, received by his employees in the course of their employment. Within forty-eight hours, not counting Sundays and legal holidays, after the occurrence of an injury causing absence from work for one day or more, a report thereof shall be made in writing to the Industrial Accident Board on blanks to be procured from the board for the purpose.

Upon the termination of the disability of the injured employee, the employer shall make a supplemental report upon blanks to be procured from the board for that purpose. If the disability extends beyond a period of sixty days, the employer shall report to the board at the end of such period that the injured employee is still disabled, and upon the termination of the disability shall file a final supplemental report as provided above.

The said reports shall contain the name and nature of the business of the employer, the situation of the establishment, the name, age, sex, wages, and occupation of the injured employee, and shall state the date and hour of the accident causing the injury, the nature and cause of the injury, and such other information as may be required by the board.

Any employer who refuses or neglects to make the report required by this section shall be punished by a fine of not more than [ ] dollars for each offense.

Within sixty days after the termination of the disability of the injured employee, the employer or other party liable to pay the compensation provided for by this act shall file with the board a statement showing the total payments made or to be made for compensation and for medical services for such injured employee.

INTERSTATE COMMERCE.

SEC. 88. This act shall affect the liability of employers to employees engaged in interstate or foreign commerce or otherwise only so far as the same is permissible under the laws of the United States.

REPORTS OF INDUSTRIAL ACCIDENT BOARD.

SEC. 89. Annually on or before the first day of February, the board shall make a report to the legislature which shall include a properly classified statement of the expenses of the board, together with any other matters which the board deems proper to report to the legislature, including any recommendations it may desire to make. The board shall, at the same time, send a copy of said report to the state insurance commissioner, and also to the state insurance manager.

DEFINITIONS.

SEC. 90. In this act, unless the context otherwise requires:

(*a*) "Employer" unless otherwise stated, includes any body of persons, corporate or unincorporated, public or private, and the legal representative of a deceased employer. It includes the owner or lessee of premises, or other person who is virtually the proprietor or operator of the business there carried on, but who, by reason of there being an independent contractor, or for any other reason, is not the direct employer of the workmen there employed. If the employer is insured it includes his insurer so far as applicable.

(*b*) "Workman" is used as synonymous with "employee," and means any person who has entered into the employment of,

or works under contract of service or apprenticeship with, an employer. It does not include a person whose employment is purely casual or not for the purpose of the employer's trade or business, or whose remuneration exceeds [ ] dollars a year. Any reference to a workman who has been injured shall, where the workman is dead, include a reference to his dependents as herein defined, if the context so requires, or, where the employee is a minor or incompetent, to his committee or guardian or next friend.

(*c*) "Injury" or "personal injury" includes death resulting from injury within [ ] years.

(*d*) The words "personal injury by accident arising out of and in the course of such employment" shall include an injury caused by the wilful act of a third person directed against an employee because of his employment.

They shall not include a disease except as it shall result from the injury.

(*e*) "Employment," in the case of private employers, includes employment only in a trade or occupation which is carried on by the employer for the sake of pecuniary gain.

Public employment means employment by the state or by a county, city, or town, or by any of the other public corporations mentioned in section 2.

It does not include the employment of public officials who are elected by popular vote or who receive salaries exceeding [ ] dollars a year.

(*f*) The word "board," whenever used in this act, unless the context shows otherwise, shall be taken to mean the Industrial Accident Board.

(*g*) "Partial disability." Diminished ability to obtain employment owing to disfigurement resulting from an injury may be held to constitute partial disability.

(*h*) "Wages" shall include the market value of board, lodging, fuel, and other advantages which can be estimated in money which the employee receives from the employer as a part of his remuneration.

"Wages" shall not include any sums which the employer has paid to the employee to cover any special expenses entailed on him by the nature of his employment.

(*i*) "Insurance Carrier" shall include the state insurance manager representing the state insurance fund and also stock corporations or mutual associations from any of which employers have obtained workmen's compensation insurance or guaranty insurance in accordance with the provisions of this act.

(*j*) Any term shall include the singular and plural and both sexes where the context so requires.

UNCONSTITUTIONAL PROVISIONS.

SEC. 91. If any part or section of this act be decided by the courts to be unconstitutional or invalid, the same shall not affect the validity of the act as a whole, or any part thereof which can be given effect without the part so decided to be unconstitutional or invalid.

PENALTIES FOR FALSE REPRESENTATIONS.

SEC. 92. If for the purpose of obtaining any benefit or payment under the provisions of this act, either for himself or for any other person, any one wilfully makes a false statement or representation, he shall be guilty of a misdemeanor and liable to a fine of not exceeding [ ] dollars, and he shall forfeit all right to compensation under this act after conviction for such offense.

PRIOR INJURIES.

SEC. 93. The provisions of this act shall not apply to injuries sustained, or accidents which occur, prior to the taking effect hereof.

RULES OF CONSTRUCTION.

SEC. 94. (*a*) The rule that statutes in derogation of the common law are to be strictly construed shall have no application to this act.

(*b*) This act shall be so interpreted and construed as to effect its general purpose to make uniform the law of those states which enact it.

PRIOR STATUTES; REPEAL.

SEC. 95. All acts and parts of acts inconsistent with this act are hereby repealed.

TITLE OF ACT.

SEC. 96. This act may be cited as the Uniform Workmen's Compensation Act.

TIME OF TAKING EFFECT.

SEC. 97. Part VII of this act shall take effect on the first day of July, nineteen hundred and [ ]; the remainder thereof shall take effect on the first day of January, nineteen hundred and [ ].

APPENDIX.

ELECTIVE ACT.

NOTE.—If an elective act is required the following clauses may be used in addition to those contained in the foregoing compulsory act:

ELECTION TO COME UNDER THIS ACT.

ELECTION BY EMPLOYER AND EMPLOYEE.

SEC. 1. This act, except sections [ ], relating to defenses, and section [ ], relating to reports, shall not apply to any employer or employee unless prior to the injury they shall have so elected by agreement, either express or implied, as hereinafter provided. Such agreement shall be a surrender by the parties thereto of their rights to any other method, form, or amount of compensation or determination thereof than as provided in this act, and shall bind the employee himself, his widow and next of kin and dependents as hereinafter defined, as well as the employer and those conducting his business during bankruptcy or insolvency.

Every contract of hiring—verbal, written, or implied—now in operation or made or implied prior to the time limited for this act to take effect shall after this act takes effect be presumed to continue subject to the provisions of this act unless either party shall at any time prior to accident, in writing, notify the other party to such contract and the board that the provisions of this act, other than sections [ ], are not intended to apply.

Every contract of hiring—verbal, written, or implied—made subsequent to the time provided for this act to take effect shall be presumed to have been made subject to the provisions of this act, unless there be, as a part of said contract, an express state-

ment in writing prior to accident, either in the contract itself or by written notice by either party to the other and the board, that the provisions of this act other than sections [ ] are not intended to apply, and it shall be presumed that the parties have elected to be subject to the provisions of this act and to be bound thereby. In the employment of minors this act shall be presumed to apply unless the notice be given by or to the parent or guardian of the minor.

The agreement for the operation of the provisions of this act other than sections [ ] may be terminated by either party upon sixty days' notice to the other and to the board in writing prior to any accident.

DEFENSES IN CASE EMPLOYER DOES NOT ELECT TO COME UNDER THIS ACT.

SEC. 2. If an employee has elected as aforesaid to come under this act and his employer has elected as aforesaid not to come under this act, then if an action is brought by the employee or his next of kin or personal representative to recover for personal injuries sustained after such election by the employer arising out of and in the course of his employment, it shall not be a defense—

(*a*) that the employee was negligent;

(*b*) that the injury was caused by the negligence of a fellow-employee;

(*c*) that the employee had assumed the risk of the injury.

DEFENSES IN CASE EMPLOYEE DOES NOT ELECT TO COME UNDER THIS ACT.

SEC. 3. If an employer has elected as aforesaid to come under this act and his employee has elected as aforesaid not to come under this act, then if an action is brought by the employee to recover damages for personal injuries sustained after the employee has so elected, and arising out of and in the course of his employment, the employer shall have all the defenses which he would have had if this act had not been enacted.

EXHIBIT C.

AN ACT

To Regulate Cold Storage of Certain Articles of Food.[1]

Be it enacted, etc.

Section 1. For the purpose of this act, "cold storage" shall mean the storage or keeping of articles of food at or below a temperature above zero of 45 degrees Fahrenheit in a cold storage warehouse; "cold storage warehouse" shall mean any place artificially cooled to or below a temperature above zero of 45 degrees Fahrenheit, in which articles of food are placed and held for thirty days or more; "article of food" shall mean fresh meat and fresh meat products and all fish, game, poultry, eggs and butter.

Sec. 2. No person, firm or corporation shall maintain or operate a cold storage warehouse without a license so to do issued by the State Food Commissioner.[2] Any person, firm or corporation desiring such a license shall make written application to the State Food Commissioner for that purpose, stating the location of the warehouse. The State Food Commissioner thereupon shall cause an examination to be made of said warehouse and, if it be found by him to be in a proper sanitary condition and otherwise properly equipped for its intended use, he shall issue a license authorizing the applicant to operate the same as a cold storage warehouse during one year. The license shall be issued upon payment by the applicant of a license fee of..... to the Treasurer of the state.

Sec. 3. In case any cold storage warehouse, or any part thereof, shall at any time be deemed by the State Food Commissioner to be in an unsanitary condition, or not properly equipped for its intended use, he shall notify the licensee of such condition and upon the failure of the licensee to put such cold storage warehouse in a sanitary condition or to properly equip the same for its intended use, within a time to be designated by the State Food Commissioner, he shall revoke such license.

[1] The title should be made to conform to the constitutional provisions of the state.

[2] Wherever in this act the words "State Food Commissioner" are used the name of any other officer or board may be substituted.

SEC. 4. Every such licensee shall keep accurate records of the articles of food received in and of the articles of food withdrawn from his cold storage warehouse, and the State Food Commissioner shall have free access to such records at any time. Every such licensee shall submit a monthly report to the State Food Commissioner, setting forth in itemized particulars the quantities and kinds of articles of food in his cold storage warehouse. Such monthly reports shall be filed on or before the fifth day of each month, and the reports so rendered shall show the conditions existing on the last day of the preceding month reported and a summary of such reports shall be prepared by the State Food Commissioner and shall be open to public inspection on or before the tenth day of each month.

SEC. 5. The State Food Commissioner shall inspect and supervise all cold storage warehouses and make such inspection of articles of food therein as he may deem necessary to secure the proper enforcement of this act, and he shall have access to all cold storage warehouses at all reasonable times. The State Food Commissioner may appoint such persons as he deems qualified to make any inspection under this act.

SEC. 6. No article of food intended for human consumption shall be placed, received or kept in any cold storage warehouse, if diseased, tainted, otherwise unfit for human consumption, or in such condition that it will not keep wholesome for human consumption. No article of food, for use other than for human consumption, shall be placed, received or kept in any cold storage warehouse unless previously marked, in accordance with forms to be prescribed by the State Food Commissioner, in such a way as to indicate plainly the fact that such article of food is not to be sold or used for human food.

SEC. 7. No person, firm or corporation shall place, receive or keep in any cold storage warehouse in this state articles of food unless the same shall be plainly marked, stamped or tagged, either upon the container in which they are packed, or upon the article of food itself, with the date when placed therein; and no person, firm or corporation shall remove, or allow to be removed, such article of food from any cold storage warehouse unless the same shall be plainly marked, stamped or tagged, either on the container in which it is enclosed or upon the article of food itself,

with the date of such removal, and such marks, stamps and tags shall be *prima facie* evidence of such receipt and removal and of the dates thereof. All articles of food in any cold storage warehouse at the time this act goes into effect shall, before being removed therefrom, be plainly marked, stamped or tagged with the date when this act goes into effect and the date of removal therefrom.

SEC. 8. No person, firm or corporation shall hereafter keep or permit to remain in any cold storage warehouse any article of food which has been held in cold storage either within or without the state, for a longer aggregate period than twelve months, except with the consent of the State Food Commissioner as hereinafter provided. The State Food Commissioner shall, upon application during the twelfth month, extend the period of storage beyond twelve months for any particular article of food, provided the same is found upon examination to be in proper condition for further cold storage. The length of time for which such further storage is allowed shall be specified in the order granting the permission. A report on each case in which such extension of storage may be permitted, including information relating to the reason for the action of the State Food Commissioner, the kinds and amounts of the articles of food for which the storage period was extended, and the length of time for which this continuance was granted, shall be filed, open to public inspection, in the office of the State Food Commissioner, and shall be included in his annual report. Such extension shall be not more than sixty days; a second extension of not more than sixty days may be granted upon a re-examination, but the entire extended period shall be not more than one hundred and twenty days in all.

SEC. 9. It shall be unlawful to sell, or to offer for sale, any article of food which has been held for a period of thirty days or over in cold storage either within or without the state, without notifying persons purchasing, or intending to purchase, the same, that it has been so held, by the display of a placard plainly and conspicuously marked, "Cold Storage Goods" on the bulk mass or articles of food; and it shall be unlawful to represent or advertise as fresh any article of food which has been held in cold storage for a period of thirty days or over.

SEC. 10. It shall be unlawful to return to any cold storage warehouse any article of food which has been once released from storage for the purpose of placing it on the market for sale. It shall be unlawful to transfer any article of food from one cold storage warehouse to another if such transfer is made for the purpose of avoiding any provision of this act, and such transfer shall be unlawful unless all prior stampings, markings and taggings upon such article shall remain thereon.

SEC. 11. The State Food Commissioner may make all necessary rules and regulations to carry this act into effect. Such rules and regulations shall be filed in the Commissioner's office, and shall not take effect until (.... days) after such filing.

SEC. 12. Any person, firm or corporation violating any provision of this act shall be guilty of a misdemeanor and shall upon conviction be punished for the first offense by a fine not exceeding .....($....) and for the second or any subsequent offense by a fine not exceeding ..... ($....) or by imprisonment of not more than six months, or by both such fine and imprisonment in the discretion of the court.

SEC. 13. This act shall be so interpreted and construed as to effect its general purpose to make uniform the law of those states which enact it.

SEC. 14. This act may be cited as the Uniform Cold Storage Act.

SEC. 15. All acts or parts of acts inconsistent with this act are hereby repealed.

EXHIBIT D.

AN ACT

TO MAKE UNIFORM THE LAW OF ACKNOWLEDGMENTS TO DEEDS OR OTHER INSTRUMENTS TAKEN OUTSIDE THE UNITED STATES.

Be it enacted, etc.

SECTION 1. All deeds or other instruments requiring acknowledgment, if acknowledged without the United States, shall be acknowledged before an ambassador, minister, envoy or chargé

d'affaires of the United States, in the country to which he is accredited, or before one of the following officers commissioned or accredited to act at the place where the acknowledgment is taken, and having an official seal, viz.: any consular officer of the United States; a notary public; or a commissioner or other agent of this state having power to take acknowledgments to deeds.

SEC. 2. Every certificate of acknowledgment, made without the United States, shall contain the name or names of the person or persons making the acknowledgment, the date when and place where made, a statement of the fact that the person or persons making the acknowledgment knew the contents of the instrument, and acknowledged the same to be his, her or their act; the certificate shall also contain the name of the person before whom made, his official title, and be sealed with his official seal and may be substantially in the following form:

.....(name of country).
.....(name of city, province or other political subdivision).

Before the undersigned..... (naming the officer and designating his official title) duly commissioned (or appointed) and qualified, this day personally appeared at the place above named..... (naming the person or persons acknowledging) who declared that he (she or they) knew the contents of the foregoing instrument, and acknowledged the same to be his (her or their) act.

Witness my hand and official seal this.....day of .....,19....

.....(name of officer).
[SEAL] .....(official title).

When the seal affixed shall contain the name or the official style of the officer, any error in stating, or failure to state otherwise the name or the official style of the officer, shall not render the certificate defective.

SEC. 3. A certificate of acknowledgment of a deed or other instrument acknowledged without the United States before any officer mentioned in Section 1 shall also be valid if in the same form as now is or hereafter may be required by law, for an acknowledgment within this state.

REPORT

OF THE

COMPARATIVE LAW BUREAU.

(To be presented at the meeting of the American Bar Association, at Salt Lake City, Utah, August 17-19, 1915.)

To the American Bar Association:

The Board of Managers of the Comparative Law Bureau beg to present the following annual report as to the work and finances of the Bureau to June 1, 1915:

The Swiss Civil Code, translated into English by Robert P. Shick and annotated by the late Mr. Charles Wetherill of the Editorial Staff, has been published and is now being offered for sale by the Boston Book Company, the official publishers of the Bureau.

The Translation of the Argentine Civil Code, by Mr. Frank L. Joaninni, of Washington, D. C., is in the hands of the printer, and it is expected that it will be published at an early date.

The Civil Code of Peru is still in the hands of the Revision Committee, but it is hoped this will be published at an early date.

Most of the matter which would, under the former system, have been published as *The Annual Bulletin for 1915* appeared in the April number of the AMERICAN BAR ASSOCIATION JOURNAL. This has been sent to the several members of the American Bar Association, and members composing the State Bar Associations who are affiliated with the Bureau as members, and also to the various law libraries and other institutions having membership in the Bureau.

Hereafter the contributions of the Bureau to the transactions of the American Bar Association will appear in the AMERICAN BAR ASSOCIATION JOURNAL.

The financial statement is as follows:

INCOME.

Balance on hand June 1, 1914	$289.01	
Dues from members, Class B	880.10	
Dues from members, Class C	194.00	
Sales of back Bulletins	14.00	
Advertisements in 1914 Bulletin	95.00	
Total		$1472.11

EXPENDITURES.

International Printing Company on account of 1914 Bulletin	$1300.00	
Stationery, expressage and sundries during 1914.	94.33	
Total		$1394.33
Balance in hands of Treasurer June 1, 1915..		$77.78

There is still a balance of $1500 due on account of the expenses of publication and distribution of the 1914 Bulletin which the appropriation made by the American Bar Association will liquidate, when it is paid to the Bureau by the Association.

Respectfully submitted,

SIMEON E. BALDWIN, *Director,*
EUGENE C. MASSIE, *Treasurer,*
ROBERT P. SHICK, *Secretary.*

June 28, 1915.

IV.

THE SEVENTH AMENDMENT AND VERDICTS BY PRESUMED ASSENT OF JURY.

A statute of Massachusetts, approved April 19, 1915, embodies a plan for avoiding a new trial, where the court is satisfied that on the evidence before the jury, a wrong verdict has been given, and it is plain what would be the right verdict. It reads thus:

"When exceptions to any ruling or direction of a judge shall be alleged, or any question of law shall be reserved, in the course of a trial by jury, and the circumstances shall be such that, if the ruling or direction at the trial was wrong, the verdict or finding ought to have been entered for a different party or for larger or smaller damages or otherwise than as was done at the trial, the judge may reserve leave, with the assent of the jury, so as to enter the verdict or finding, if upon the question or questions of law so raised the court shall decide that it ought to have been so entered. The leave reserved, as well as the findings of the jury upon any particular questions of fact that may have been submitted to them, shall be entered in the record of the proceedings, and, if upon the question or questions of law it shall be decided, either by the same court, or by the appellate court, that the verdict or finding ought to have been entered in accordance with the leave reserved, it shall be entered accordingly and, when so entered, shall have the same effect as if it had been entered at the trial."

It will be remembered that in Slocum *vs.* N. Y. Life Ins. Co., 228 U. S. 364, it was held by five of the justices against four that by reason of the Seventh Amendment, although under the practice of the state a judgment may be entered on the evidence *non obstante veredicto,* the federal court may not do so, but must order a new trial where the evidence does not sustain the verdict.

The Massachusetts statute proceeds upon the principle that the jury can not only return alternative verdicts, but may assent in advance to the court's ordering the entry of a verdict which they have not returned.

It is urged in support of such proceedings that they were virtually recognized at common law. A leading authority bearing on the subject is Treacher *vs.* Hinton, 4 B. & Ald. 413. Here

a non-suit was granted, on the trial of an undefended case, with liberty for the plaintiff to move to enter a verdict in his favor for the sum claimed. This was done, and the defendant insisted that the court could not order such an entry. The court held otherwise, Bayley, J., saying:

"I have no doubt, that, under the circumstances of this case, the court may order a verdict to be entered for the plaintiff. It appears from the evidence that it was imperative on the jury to find a verdict for the plaintiff. When the judges, therefore, non-suited, and stated, in the hearing of the jury, that the plaintiff should be at liberty to move to enter a verdict, and no objection was made, either by the defendant or the jury, the jury in fact consented that the verdict should be so entered if the court thought fit. It seems to me, therefore, that when it is entered, it becomes the verdict of the jury as much as if it had been originally pronounced by them."

See also Bothwell's case, 215 Mass. 467.

The general subject has been discussed by John L. Thorndike in the Harvard Law Review for June, 1913; by Professor Henry Schofield, in the Illinois Law Review, VIII, 227, 381, 465; and by Dean Ezra K. Thayer, in the University of Pennsylvania Law Review for May, 1915.

V.

CONTRIBUTIONS OF THE BUREAU OF COMPARATIVE LAW.

A.

GERMAN ORDINANCES FOR THE OCCUPIED TERRITORIES OF BELGIUM.

COMPILED BY
DR. C. H. HUBERICH.

Legislative Power.

In the exercise of the powers of legislation vested in occupying states, the German Government, acting through a Governor-General, has enacted a number of laws and ordinances, in part extending or modifying the Belgian law, in part containing new provisions designed to carry out the policy of the occupying state. Those of the most general interest are noted below. Many of the laws are based on the emergency laws of the Empire. The laws also apply to the French territory of Givet-Fumay.

The enactments of the government of occupation are published in the Gesetz- und Verordnungsblatt für die okkupierten Gebiete Belgiens,[1] the first number of which appears at Brussels at 5th September, 1914. The enactments are promulgated in German, French and Flemish, of which the German text is the authoritative one. In this report are considered the enactments promulgated up to 21st March, 1915, being No. 52 of the Gesetz- und Verordnungsblatt. The contents of each number are given. The laws are not numbered, and are cited by date and by the number of the Gesetz- und Verordnungsblatt.

[1] The text of the ordinances, etc., contained in Nos. 1-25 of the Gesetz- und Verordnungsblatt is reprinted in Huberich and Speyer, *German Legislation for the Occupied Territories of Belgium*, The Hague, 1915. The text of the ordinances contained in Nos. 26-52 is reprinted in the first supplement to the aforementioned work.

No. 1. 5TH SEPTEMBER, 1914.

Proclamation of 2d September, 1914.—Establishment of general government in Brussels, with auxiliary civil administration. Requirement of obedience to laws of occupying state.

Ordinance of 3d September, 1914.—Relates to the legal force of the enactments of the Governor-General. Unless the contrary is stated the enactment comes into force at the close of the day on which it is published in the Gesetz- und Verordnungsblatt.

No. 2. 11TH SEPTEMBER, 1914.

Ordinance of 10th September, 1914.—Extends time of protest to 30th September, 1914. Sundry further extensions afterwards made.

Ordinance of 10th September, 1914.—Extends moratorium in respect of bank deposits to 30th September, 1914. Sundry further extensions made.

No. 3. 21ST SEPTEMBER, 1914.

Ordinance of 18th September, 1914.—Belgian branches of banks whose chief office is in a country at war with the German Empire are placed under prohibition against entering into new transactions, except in so far as necessary for the due settlement of old business. Belgian banks are prohibited from carrying on their business in a manner detrimental to German interests.

No. 5. 29TH SEPTEMBER, 1914.

Ordinance of 25th September, 1914.—Where foreigners are by reason of the war prevented from defending their rights, the court must grant extension in accordance with Article 1244, Subs. 2 of Civil Code.

No. 6. 5TH OCTOBER, 1914.

Ordinance of 3d October, 1914.—German money must be accepted in payment at the rate of at least Fr. 1.25 to the mark.

No. 8. 15TH OCTOBER, 1914.

Ordinance of 13th October, 1914.—Establishes censorship over publications, theatrical productions, public addresses and films.

Ordinance of 3d November, 1914.—Prohibits all payments to

persons, except German subjects, within Great Britain or Ireland, or the British Colonies or Possessions, or within France, her Colonies and Protectorates, and the transmission of funds and securities to these countries. Obligations are suspended from 31st July, 1914. The provisions do not apply to obligations payable in Germany or in the occupied territories in favor of local branches of enemy firms.

No. 11. 14TH NOVEMBER, 1914.

Ordinance of 10th November, 1914.—Suspends period of limitation in favor of German, Austrian, Ottoman and neutral subjects from 1st August, 1914, to 15th November, 1914.[1]

Notification of 12th November, 1914.—Provides that in accordance with Article 48 of The Hague Convention, the General Government will continue to collect the revenues, customs and taxes.

Ordinance of 15th November, 1914.—Requirement of acceptance of German money cannot be varied by agreement.

No. 15. 25TH NOVEMBER, 1914.

Ordinance of 20th November, 1914.—Provides that tenants prevented from using premises by reason of war may demand abrogation of contract or diminution of rent.

No. 16. 30TH NOVEMBER, 1914.

Ordinance of 26th November, 1914.—Business undertakings controlled by persons in an enemy country may be placed under supervision. Supervision may be exercised in respect of undertakings in the Belgian Congo, and over Belgian undertakings in which 10 per cent or more of the capital is owned by German subjects.

No. 17. 1ST DECEMBER, 1914.

Ordinance of 19th November, 1914.—Germany, Austria-Hungary and Turkey not to be considered as foreign countries or as enemies under Penal Code, Article 113, et seq., or the law of 4th August, 1914, relating to crimes against the external security

[1] Evidently by inadvertence Hungarian subjects are not mentioned.

of the state. Persons intimidating workmen from performing work for the German authorities punishable by imprisonment.

Ordinance of 28th November, 1914.—Extends prohibition of payments contained in ordinance of 3d November, 1914, to Russia and Finland.

No. 18. 7TH DECEMBER, 1914.

Ordinance of 3d December, 1914.—Abrogates Belgian law of 4th August, 1914, relating to invasion, and transfers the functions of the provincial governors to the German military governors, and the functions of the King of the Belgians to the Governor-General.

No. 19. 11TH DECEMBER, 1914.

Ordinance of 8th December, 1914.—Convenes *conseils provinciaus* and *députations permanentes* for purpose of voting war contribution.

No. 20. 17TH DECEMBER, 1914.

Notification of 15th December, 1914.—Puts law of 26th May, 1914, relating to labor of women and children in force.

No. 21. 18TH DECEMBER, 1914.

Notification of 10th December, 1914.—Prohibits importation of salt from enemy countries.

No. 24. 24TH DECEMBER, 1914.

Ordinance of 22d December, 1914.—Revokes note-issuing privilege of National Bank of Belgium and transfers the privilege to the Société Génerale de Belgique.

No. 25. 26TH DECEMBER, 1914.

Ordinance of 23d December, 1914.—Levies direct and indirect taxes for 1915 on basis of laws in force on 31st December, 1914.

Ordinance of 23d December, 1914.—All legal notices requiring publication in the Moniteur Belge hereafter to appear in the Gesetz- und Verordnungsblatt.

No. 27. 4TH JANUARY, 1915.

Order of 10th December, 1914.—Imposes a war contribution of 40 million francs per month for one year.

No. 28. 7TH JANUARY, 1915.

Ordinance of 31st December, 1914.—Repeals Belgian ordinance of 14th August, 1914, relating to prices of necessaries, and empowers military governors to fixe maximum prices.

Notification of 4th January, 1915.—Calls attention to the fact that Belgian enactments made after the date of the military occupation have no legal force. Salaries paid to government officials by the Belgian authorities subject to confiscation.

No. 29. 8TH JANUARY, 1915.

Notification of 27th December, 1914.—Prohibits exportation of animal feed.

Ordinance of 3d January, 1915.—Extends Belgian customs and tax laws to the French territory Givet-Fumay.

No. 30. 11TH JANUARY, 1915.

Ordinance of 19th January, 1915.—Prohibits exhumation of bodies of subjects of non-German states and their transportation to other places.

No. 31. 14TH JANUARY, 1915.

Ordinance of 19th January, 1915.—Note issues of the Société Génerale de Belgique made legal tender.

No. 32. 15TH JANUARY, 1915.

Ordinance of 11th January, 1915.—Prohibits baking of cakes in bakeries, confectioneries and hotels except on Wednesdays and Saturdays.

No. 33. 19TH JANUARY, 1915.

Ordinance of 16th January, 1915.—Belgian subjects who voluntarily left their domicil after the outbreak of the war and have remained outside of Belgium for more than two months,

and do not return before 1st March, 1915, and resume their domicil are required to pay in addition to the personal tax due for the year 1914 an additional tax equal to ten times the ordinary tax. Certain small tax payers are exempt.

No. 34. 21st January, 1915.

Ordinance of 16th January, 1915.—Prohibits open air meetings, public meetings for the discussion of political matters, and all other public and private meetings, except with permission. Does not apply to meetings for religious, professional, social, scientific or artistic purposes. Political clubs and associations prohibited.

No. 35. 23d January, 1915.

Ordinance of 16th January, 1915.—Subjects of Germany and of other (*sic*) states not at war with Germany are entitled to demand postponement or release of payment of direct taxes where the debtor on account of the war was obliged to leave his Belgian domicil and thereby sustained such economic loss that his ability to pay taxes was seriously affected.

No. 37. 9th February, 1915.

Ordinance of 3d February, 1915.—Amends decree of 10th Vendémiaire An IV, relating to responsibility of communes for thefts, robberies and acts of violence.

Ordinance of 3d February, 1915.—Provides that elections to the Conseils de Prud'hommes are not to take place.

Notification of 6th February, 1915.—Prohibits importation of beet sugar seed.

Ordinance of 10th February, 1915.—Relates to establishment of courts of arbitration for rent controversies.

No. 41. 20th February, 1915.

Ordinance of 5th February, 1915.—Relates to quartering of soldiers and civilian officials.

Ordinance of 17th February, 1915.—Provides for sequestration of enemy undertakings. Under the head of enemy undertakings are placed undertakings managed or controlled by persons

in enemy countries or whose capital to the extent of at least one-third belongs to such persons or whose principal business is carried on in enemy countries or where the public interests of Germany or of the occupied territories require a continuance of the business or where the conduct of the business is contrary to the public interest. Branches, agencies, stocks of goods and immovables may be an undertaking within the meaning of the ordinance.

No. 45. 28th February, 1915.

Ordinance of 25th February, 1915.—Prohibits exportation of all merchandise.

B.

CHINA.

Judicial Organization.[1]

The present judicial organization of the Republic of China is founded upon the organization of Chinese law courts as decreed by the Imperial Edict of February 7, 1910 (Hsuan T'ung, 1st year, 12th month, 28th day). The closing years of the Manchu Dynasty were marked by an attempt at reform of the judicial system along with the establishment of a constitutional form of government, but the revolution breaking out shortly thereafter, it was left to the incoming Republican authorities to attend to the practical carrying out of the reformed system. This reformed system, as established by this Edict, became the law of the new Republic by an executive order of the Provisional President, Yuan Shih K'ai, dated March 10, 1912, stating that:

"As yet the laws of the Republic of China have not been discussed, settled and promulgated; therefore the laws which were in force formerly and the new Penal Code, after those sections which are not in accord with Republican institutions have been changed, shall be used temporarily."

This order remains in force today. The carrying out of its provisions by the present administration has, however, been considerably hampered by the pressing financial stringency in the new Republic.

[1] **The material for this sketch has been furnished by Crawford M. Bishop, LL. B., Vice Consul of the United States at Shanghai.**

All the laws of the Republic of China up to December, 1913, including the provisional Penal Code and the constitution of the court system, have been published by The Commercial Press of Shanghai in four small volumes.

The principal innovation brought about by the establishment of the new system was the separation of the executive and judicial powers by the organization of a separate and independent system of courts, presided over by officers charged solely with judicial functions. Heretofore justice had been administered by the District Magistrate (Chih hsien), the Prefect (Chih fu), the Intendant of Circuit (Taotai) and the Governor (Hsun fu)—all of whom were administrative officials—acting either personally or by subordinate officers, the courts in each instance being the residence (yamen) of the administrative official.

The new Penal Code has been translated into English by N. S. Johnson, the American consul at Chang-Sha.

It is to be noted in connection with the consideration of the separation of powers, that the judicial organization has been established, not by constitutional provision or legislative act, but by an executive order, and that the whole judicial system as thus constituted is made subordinate to the Board of Laws, an executive department.

Corresponding somewhat to the continental system of administrative courts was that provision of the code exempting members of the military class from the jurisdiction of the ordinary courts of the local officials, and providing that in civil or criminal cases wherein they were interested or to which they were parties, a separate court was to try the case, constituted by the chief military official of the district and the district magistrate acting together.

The second article of the Edict of 1910, and of the present regulations, provides that "all cases affecting the military or civil government of China, will be settled under regulations to be hereinafter determined, and will not be in the jurisdiction of the above civil courts"; thus grafting the European doctrine of the exemption of the administrative officials from the control of the ordinary courts onto the old privilege of the exemption of the Manchu military class from those courts.

There is one exception to the general rule of the separation of the judiciary from the administrative office; and to foreigners in China an important one. In 1912 or 1913 there was issued a Presidential order conferring upon certain of the representatives of the Board of Foreign Affairs at certain treaty ports—among which was that of Chefoo—jurisdiction over cases to which a foreigner might be a party. This jurisdiction was not, however, generally conferred upon all of the representatives of the Board of Foreign Affairs, but only upon those named in the Presidential order. This new foreign-intercourse official, when thus acting in a judicial capacity, represents the jurisdiction formerly exercised by the former Taotai under the old system, to whom consuls were wont to refer cases in the Manchu *régime*. The office of Special Envoy for Foreign Affairs is, in fact, often combined with that of Tao-yin, the modern term for the official formerly called Taotai. The jurisdiction of the Envoy would appear to be over both civil and criminal cases, and is both original and appellate.

Article XV of the treaty between the United States and China provides: "The Government of China having expressed a strong desire to reform its judicial system and to bring it into accord with that of Western nations, the United States agrees to give every assistance to such reform, and will also be prepared to relinquish extraterritorial rights when satisfied that the state of the Chinese laws, the arrangements for their administration, and other considerations warrant it in so doing." The reorganization of the court system constitutes a distinct step in advance and an undeniable improvement over the old system. In so far as the promulgation of the law for its organization is concerned, China has done something to bring its official system into accord with the provisions of the above-quoted article. But whether the system, as so constituted, proves an effective one for the administration of the laws, and results in the securing of justice, the test of time alone can decide.

Conflict of Laws. Divorce.

In Richards *vs.* Richards (decision filed May 1, 1915) the United States Court for China (Lobingier, J.) has decided that a suit for divorce by an American citizen, domiciled in China,

is a proceeding *in rem* respecting his legal *status,* and therefore falls within its jurisdiction, although the defendant (the wife) is a Chinese, and so incapable of naturalization by marriage.

C. S. L.

C.

THE PHILIPPINES.

Legislation.

The legislature adjourned in February, 1915, after a four months session.

Among the enactments were the following:

Requiring that notaries public, with a few exceptions, should be lawyers.

Requiring practitioners before courts of justices of the peace to have some knowledge of law.

Regulating forms of insurance.

Appeals.

The appeals thus far taken to the Supreme Court of the United States from the Supreme Court of the Philippines number 57, down to the close of Vol. 234 of the United States Reports. Eighteen of these were dismissed. Of those remaining, 26 of the judgments have been affirmed, and 13 reversed. C. S. L.

VI.

ORGANIZATION AND WORK OF THE BUREAU OF COMPARATIVE LAW.

The place of the Annual Bulletin heretofore published by the Bureau of Comparative Law will henceforth be taken by this JOURNAL.

The objects of the Bureau will continue as heretofore. They include the translation into English of foreign laws, the preparation of bibliographies in its special field, and the consideration of foreign legislation and jurisprudence with a view to present information and materials of value to lawyers, law teachers and law students.

All members of the American Bar Association and of the Bureau of Comparative Law will hereafter receive the AMERICAN BAR ASSOCIATION JOURNAL every quarter.

All members of the Association are by that fact also members of the Bureau. Any State Bar Association can become a member on payment of $15 annually, and will then be entitled to send three delegates to the annual meeting of the Bureau and to receive five copies of the AMERICAN BAR ASSOCIATION JOURNAL. Any county, city, district, or colonial Bar association, law school, law library, institution of learning or department thereof, or other organized body of a kind not above described, may become a member on payment of $6 annually, and will then be entitled to send two delegates to the annual meeting of the Bureau and to receive two copies of the JOURNAL. Any person eligible to the American Bar Association, but not a member of it, can become a member of the Bureau on payment of $3 annually, and will then receive the JOURNAL.

Distinguished foreign jurists, legislators, or scholars may be elected honorary members. They pay no fees.

The authorship of the contributions of the Bureau to the JOURNAL is indicated in each case by the initials of the writer.

The next meeting of the Bureau will be held at Salt Lake City, Utah, Tuesday, August 17, 1915, at 2 P. M.

HONORARY MEMBERS OF THE BUREAU.

The Rt. Hon. Viscount Bryce of Dechmont, O. M., D. C. L., LL. D., F. R. S., of England.
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D. Joseph Jitta, Jur. Dr., of Holland.
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All editorial communications should be addressed to the Chairman, who will see that they reach the proper editor. All books for review should also be sent to him.

STATE BAR ASSOCIATIONS AND OTHER INSTITUTIONS NOW MEMBERS OF THE BUREAU.

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State Bar Association of Connecticut.
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Chicago Correspondence School of Law.
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Minnesota State Library.
State Law Library of Washington.
Kansas State Library.
California State Library.
Vermont State Library.
New Hampshire State Library.
Massachusetts State Library.
Iowa State Library.
The Library Company of the Baltimore Bar.

RECENT TRANSLATIONS OF FOREIGN LAWS, NOW ACCESSIBLE.

Belgian Law, by Todd.
A Short Treatise on Belgian Law and Legal Procedure, by De Leval.
French Civil Code, by Cachard.
French Civil Code, by Wright.
Japanese Civil Code, by Gubbins.
Japanese Civil Code, by Lonholm.
Japanese Civil Code, annotated by De Becker.
Japanese Commercial Code, by Yang Yin Hang.
Japanese Code of Commerce, by Lonholm.
Japanese Penal Code, by Lonholm.
German Civil Code, by Chung Hui Wang.
German Civil Code, by Loewy, under the direction and annotated by a joint committee of the Pennsylvania Bar Association and the University of Pennsylvania.
Roman-Dutch Law, by Wessels.
Penal Code of Siam, by Tokichi Masao (18 Yale Law Journal, 85).
Visigothic Code, by Scott, of this Editorial Staff.
Swiss Civil Code, by Shick and Wetherill, of this Editorial Staff.
Swiss Banking Law, by Landmann.
Banking Laws of Various Countries, by National Monetary Commission.
Digest of the Mercantile Laws of Canada and Newfoundland, by Anger.
Corporations in Mexico, Johnson & Galston, Editors; synopsis of laws relating to the formation of corporations; registration of foreign corporations; conveyance of real estate; creation of bond issues, etc.

Laws of Mexico, by Wheless, of this Editorial Staff.
Handbook of Mexican Law, by Kerr, of this Editorial Staff.
Mining Law of Mexico, by Kerr, of this Editorial Staff.
Mexican Corporation Laws, by Fuller.
Mining Laws of Columbia, by Eder, of this Editorial Staff.
Civil Code of Argentina, by Joannini; soon to be published by this Bureau.
Civil Code of Peru, by Joannini; soon to be published by this Bureau.
The Seven Parts (Las Siete Partidas), by Scott, of this Editorial Staff; soon to be published by this Bureau.

HOTEL ACCOMMODATIONS AT SALT LAKE CITY, UTAH.

UTAH. EUROPEAN PLAN.

One person in room without bath	$1.50 and $2.00
Two persons in room without bath	2.50 and 3.00
One person in room with bath	2.50 and up
Two persons in room with bath	4.00 and up
Two connecting single rooms with bath	5.00 and up
Parlor, bed-room and bath	10.00 and up

NEWHOUSE.

One person in room with bath	1.50 and up
Two persons in room with bath	2.50 and up
Parlor, bed-room and bath	6.00 and up

GRAND.

One person in room without bath	1.00 and up
Two persons in room without bath	1.50 and up
One person in room with bath	1.50 and up
Two persons in room with bath	2.00 and up

MOXUM.

One person in room without bath	1.50 and up
Two persons in room without bath	2.00 (2 beds.)
One person in room with bath	2.00
Two persons in room with bath	2.50
Suite for two persons with bath	4.00

SEMLOH.

One person in single room without bath	1.00 and up
One person in single room with bath	1.50 and up
Two persons in double room without bath	1.00 each
Two persons in double room with bath	2.50

WILSON.

One person, single room without bath	1.00 and 1.50
One person, single room with bath	1.50 and 2.50
Two persons, double room without bath	1.50 and 2.50
Two persons, double room with bath	2.00 to 4.00

KENYON.

Single room without bath	1.00
Double room without bath	2.00
Single room with bath	2.00
Double room with bath	3.00

CULLEN.

One person in room without bath	1.00 and 1.50
One person in room with bath	1.50 to 3.00
Two persons in room without bath	1.50 and 2.00
Two persons in room with bath	2.50 and up

WINDSOR.

One person in single room without bath	$ .75 and	$1.00
Two persons in double room without bath	1.00 and	1.50
Two persons in double room with bath	2.00 to	3.00
Suite for four persons with bath	4.00	

PEERY.

Single room, one person, without bath	1.00
Single room, one person, with bath	1.50
Double room, one or two persons, without bath	2.50
Double room, four persons, with bath	2.50

RAILROADS, RATES, ETC.

ROUTES BETWEEN CHICAGO AND SALT LAKE CITY, VIA DIRECT STANDARD LINES.

Chicago, Burlington and Quincy R. R. (Burlington Route).—The Burlington Route operates between Chicago and Denver, thence in connection with the Denver and Rio Grande to Salt Lake City, passing through Burlington, Omaha, Lincoln, Denver, Colorado Springs, Pueblo, Royal Gorge and Glenwood Springs.

Chicago, Milwaukee and St. Paul R. R.—The Chicago, Milwaukee and St. Paul R. R. operates between Chicago and Omaha, thence in connection with the Union Pacific R. R. to Ogden, and the Oregon Short Line to Salt Lake City, passing through Council Bluffs, Omaha, Julesburg, Cheyenne and Green River.

Chicago and Northwestern R. R.—The Chicago and Northwestern R. R. operates between Chicago and Omaha, thence in connection with the Union Pacific to Ogden, and the Oregon Short Line to Salt Lake City, passing through Council Bluffs, Omaha, Julesburg, Cheyenne and Green River.

Rock Island Lines.—The Rock Island operates between Chicago and Denver, thence in connection with the Denver and Rio Grande R. R. to Salt Lake City, passing through Des Moines, Omaha, Lincoln, Denver, Colorado Springs, Pueblo, Royal Gorge and Glenwood Springs.

Santa Fe R. R.—The Santa Fe R. R. operates between Chicago and Denver, thence in connection with the Denver and Rio Grande R. R. to Salt Lake City, passing through Kansas City, La Junta, Pueblo, Colorado Springs, Denver, Royal Gorge, Glenwood Springs.

From Denver passengers can travel either via the Denver and Rio Grande R. R. or via the Union Pacific R. R. between Denver and Salt Lake City.

The exact time of departure of morning and afternoon trains out of Chicago has not yet been fixed, but all lines shown above will have morning and evening trains from Chicago to Salt Lake City, via routes outlined, and the time consumed between said points is approximately 45 hours.

Either the Southern Pacific or the Western Pacific can be used between Salt Lake City and San Francisco—time consumed between these points approximately 24 to 30 hours.

Side trip can be made from Salt Lake City to Yellowstone National Park, via the Oregon Short Line R. R. between Salt Lake City and Yellowstone Station, at cost of $53.50, which rate includes railroad transportation from Salt Lake City to Yellowstone Station and return, five-day tour through the park with hotel accommodations (13 meals and 4 nights' lodging).

Those who would enjoy the novelty of a comfortable camping trip, the Wylie way, can purchase side-trip rail tickets, Salt Lake to Yellowstone and return for $12.25. The five-day Wylie tour is $35.00, the six-day Wylie tour is $40.00. These charges cover all meals, lodging, stage transportation and guides' service.

Side-trip can be made from San Francisco to the Yosemite Park and return, via Santa Fe (Coast Line), or Southern Pacific to Merced, thence Yosemite Valley R. R. to El Portal and the Yosemite Transportation Company at cost of $22.35, which includes railroad and stage transportation.

Side trip tickets to the Yellowstone National Park or the Yosemite Park can be purchased at Salt Lake City and San Francisco, respectively, or coupons covering these side-trips can be included in original ticket.

Tickets from Chicago to San Francisco and return by any of above routes, including Los Angeles and San Diego, at Exposition fares, with permission to stop over at points desired, are now on sale daily up to and including November 30, at rate of $62.50. Tickets at this rate bear a final return limit of three months, but in no case later than December 31.

The above rate provides for free side-trip from Los Angeles to San Diego and return, providing ticket is routed in one direction

via Los Angeles. If not routed via Los Angeles a charge of $4.00 is made to cover this side trip.

Tickets may be routed in one direction via Portland or Seattle, in which case the rate will be $17.50 higher.

Correspondingly low fares apply from other stations in the East, and will be quoted on application to local ticket agents throughout the country.

The following sleeping car fares apply between Chicago and Salt Lake City:

Lower Berth.	Upper Berth.	Section.	Drawing Room.
$8.50	$6.80	$15.30	$30.00